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No. 81-1859

In the Supreme Court of the United States

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF ILLINOIS,
PETITIONER,

v.

RALPH LAFAYETTE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether a purse may be validly searched as part of a normal booking procedure or as a delayed search incident to arrest.

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PEOPLE OF THE STATE OF ILLINOIS,
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v.

RALPH LAFAYETTE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD JUDICIAL DISTRICT

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, as to which review is being sought, is reported at 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981). (See Appendix A) The order of the Illinois Supreme Court denying leave to appeal is not reported, but is attached hereto. (See Appendix B)

JURISDICTION

The opinion of the Appellate Court of Illinois, Third Judicial District, was filed on September 10, 1981. (See Appendix A) A timely petition for leave to appeal was filed by the

petitioner in the Illinois Supreme Court. The order of the Illinois Supreme Court denying the petition for leave to appeal was entered on February 2, 1982. (See Appendix B)

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3). The instant Petition for Writ of Certiorari is being filed within 60 days of the Illinois Supreme Court's order denying leave to appeal.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The respondent in this case was arrested for disorderly conduct. Subsequently, he was transported to the police station and his purse was searched. Prior to trial the respondent filed a motion to suppress evidence allegedly illegally seized from him.

The respondent testified in his own behalf as the first witness at the hearing on the motion to suppress. He testified that on September 1, 1980, at approximately 10 p.m., he was at the Town Cinema in Kankakee, Illinois. At that time, he had a purse with a shoulder strap. He further testified that he was arrested by Sergeant Mietzner and taken to the city jail. When they arrived at the jail, Sergeant Mietzner directed the respondent to take everything out of his pockets. Sergeant Mietzner then removed the respondent's purse from his shoulder and examined its contents. Sergeant Mietzner did not have a warrant authorizing the search of the purse and the respondent did not consent to the search. The respondent considered the purse to be private. Sergeant Mietzner removed some pills from the purse.

On cross-examination, the respondent stated that he was arrested for disturbing the peace. He agreed that his purse was searched during the booking procedure.

Following the respondent's testimony, the defense rested and Sergeant Mietzner testified as a witness for the People. Sergeant Mietzner testified that on September 1, 1980, at approximately 10 p.m., he was called to the Town Cinema by the theater manager. When he arrived at the theater, he found the respondent arguing with the manager. Sergeant Mietzner subsequently arrested the respondent for disturbing the peace. The respondent had a purse with a shoulder strap. The respondent was handcuffed and transported to the police station.

At the police station the respondent was unhandcuffed. In the booking room the respondent was directed to remove everything from his pockets and place any items on the counter. The respondent complied with this order. The respondent also removed a partially empty package of cigarettes from his purse and placed his purse on the counter. Sergeant Mietzner patted the purse and felt something else inside. Sergeant Mietzner then looked inside and found ten pills wrapped in a cigarette case package. A Valtox test was performed on the pills and they were found to contain amphetamines. The pills were found during the booking procedure in a search conducted as part of the normal police procedure.

On cross-examination, Sergeant Mietzner agreed that he did not fear for his safety when he arrested the respondent and that he did not expect to find a gun in the respondent's purse. Sergeant Mietzner also stated that the purse was small and that he could have placed it in a bag and sealed the bag. There was also a locker at the police station that he could have locked the respondent's belongings in. The respondent was present when Sergeant Mietzner looked inside the purse.

In response to the trial judge's questioning, Sergeant Mietzner stated that the respondent was getting undressed before entering his cell when his purse was searched. Sergeant Mietzner also testified that when he arrests a woman he examines the contents of her purse as part of the routine booking procedure.

The trial court granted the respondent's motion to suppress. The Illinois Appellate Court affirmed the trial court's suppression order.

The Appellate Court held that the State waived the argument that the search was a valid search incident to arrest by failing to raise the argument in the trial court. However, the

court went on to state that under this Court's opinion in *United States v. Chadwick,* the search was proper since the purse was a closed container in which respondent had an expectation of privacy independent of that of his body and clothing. The court further held that this Court's opinion in *South Dakota v. Opperman,* governing inventory searches, was not controlling in the case at bar since the respondent's privacy interest in his purse outweighed the State's need to conduct an inventory search. (See Appendix A)

The petitioner herein, the People of the State of Illinois, sought leave to appeal the decision of the Illinois Appellate Court in the Illinois Supreme Court, but leave was denied. (See Appendix B)

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE DECISION OF THE ILLINOIS APPELLATE COURT, IN CONTRAVENTION TO THIS COURT'S OPINIONS, HAS SUBSTANTIALLY LIMITED A POLICE OFFICER'S RIGHT TO SEARCH A DEFENDANT INCIDENT TO ARREST AND TO CONDUCT A ROUTINE INVENTORY SEARCH DURING NORMAL BOOKING PROCEDURES.

The People argued on appeal that the search of the respondent's purse was proper as a delayed search incident to arrest and as a routine inventory search conducted during the booking of the respondent. The People relied upon the rationale expressed in this Court's decisions in *United States v. Robinson,* 414 U.S. 218 (1973); *United States v. Edwards,* 415 U.S. 800 (1974); *South Dakota v. Opperman,* 428 U.S. 364 (1976), and in

subsequent decisions of other state and federal courts applying the rationale of these cases to factual situations analogous to the case at bar.

Although the Illinois Appellate Court recognized that other state and federal courts had approved searches of defendants' purses in analogous situations, the court concluded that the instant search was improper because the respondent's expectation of privacy in his purse outweighed any right of the State to search his purse. In reaching its decision, the court placed great reliance on this Court's decision in *United States v. Chadwick,* 433 U.S. 1 (1977).

Petitioner maintains that the Appellate Court has read *Chadwick* too broadly. In *Chadwick,* this Court held that the police station search of a defendant's *locked* footlocker, which was found next to the defendant, could not be justified as a delayed search incident to arrest. The Appellate Court, in the instant case, incorrectly determined that the purse carried by the respondent was analogous to the footlocker in *Chadwick.* Obviously, a purse is much more intimately associated with the person than is a footlocker. If it is improper to search the respondent's purse, it is probably also improper to search a defendant's pockets and wallet incident to arrest. The absurd result would be that a defendant could only be subjected to a pat-down search incident to a custodial arrest. Thus, public policy reasons exist for allowing the search of a purse which did not exist in *Chadwick.*

Petitioner further maintains that the Illinois Appellate Court has ignored the right of the police to search a defendant incident to arrest. In *United States v. Robinson,* 414 U.S. 218 (1973), this Court held:

> [T]hat in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment,

> but is also a "reasonable" search under that Amendment.

414 U.S. at 235.

Furthermore, in *United States v. Edwards,* 415 U.S. 800 (1974), this Court stated:

> [T]hat searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention.

415 U.S. at 803.

Several state and federal courts have interpreted these decisions to mean that when a defendant is arrested and taken to a police station, it is proper to search a wallet or purse at the station as a search incident to arrest. *United States v. Passaro,* 624 F.2d 938 (9th Cir. 1980); *United States v. Avila-Dominguez,* 610 F.2d 1266 (5th Cir. 1980); *United States v. Phillips,* 607 F.2d 808 (8th Cir. 1979); *State v. Sabater,* 3 Kan. App. 2d 692, 601 P.2d 11 (Kan. App. 1979); *Dawson v. State,* 40 Md. App. 640, 395 A.2d 160 (1978); *But see People v. Helm,* ____ Ill. 2d ____, ____ N.E.2d ____ (No. 54507, December 18, 1981). (See Appendix C).

Similarly, in the case at bar, when the respondent was arrested he had his purse over his shoulder. When he arrived at the police station, Sergeant Mietzner properly examined the contents of the purse as a delayed search incident to arrest. Thus, the search of the purse was proper.

Finally, petitioner maintains that the search was proper as an inventory search conducted during normal booking procedures. It is uncontested that the respondent's arrest was proper and that the contents of his purse were examined as part of a routine inventory conducted during normal booking procedures.

The policy reasons for upholding inventory searches conducted pursuant to routine police procedures were outlined by this Court in *South Dakota v. Opperman,* 428 U.S. 364 (1976), as follows:

> [T]he protection of the owner's property while it remains in police custody [citation omitted]; the protection [of] the police against claims or disputes over lost or stolen property [citation omitted]; and the protection of the police from potential danger [citation omitted].

428 U.S. at 369.

Although the petitioner recognizes that a distinction exists between inventorying the contents of an automobile, as in *Opperman,* and in inventorying the contents of a purse, the petitioner contends that the same policy reasons for allowing an inventory exist. Several other courts have upheld searches of defendants' purses during routine booking procedures at a police station. *United States v. Venizelos,* 495 F. Supp. 1277 (S.D. N.Y. 1980); *People v. Maher,* 130 Cal. Rptr. 508, 550 P.2d 1044 (1976); *People v. Harris,* 105 Cal. App. 3d 204, 164 Cal. Rptr. 296 (1st Dist. 1980).

In the case at bar, if the respondent had any money or valuables, he would probably have carried them in his purse. As in *Opperman,* the police officers had a right to know what they were safeguarding and the respondent had a right to have his property safely kept. Otherwise, the police officers might not have taken sufficient steps to properly safeguard the respondent's property or the respondent might have falsely claimed that his property was lost or stolen. Obviously, a routine inventory of the respondent's personal property during the booking procedure was necessary for the protection of both the police officers and the respondent.

Thus, the search of the respondent's purse was proper. The Illinois Appellate Court incorrectly determined that the search of the purse at the police station was not justified as either a delayed search incident to arrest or as an inventory search. The court's decision is directly contrary to the conclusions reached by several state and federal courts. Its conclusion is also contrary to this Court's holdings in *Edwards, Robinson,* and *Opperman.* To allow such a decision to stand as a matter of federal constitutional law will severely limit the scope of searches conducted incident to arrest under *Robinson* as well as the continued use of inventory searches under *Opperman.*

CONCLUSION

For the foregoing reasons, petitioner prays that this Court grant the instant Petition for Writ of Certiorari and, upon review, reverse the decisions of the Illinois courts in this case.

Respectfully submitted,

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April 3, 1982.

No. 81-99

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 1981

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, vs RALPH LAFAYETTE, Defendant-Appellee.	Appeal from the Circuit Court of the Twelfth Judicial Circuit Kankakee County, Illinois Honorable John F. Michela Presiding Judge

Mr. JUSTICE HEIPLE delivered the opinion of the court.

The State appeals from the order of the Circuit Court of Kankakee County which suppressed evidence seized. The issue presented is whether a warrantless search of the defendant's (Ralph Lafayette) shoulder bag, made during booking procedures following a valid custodial arrest, was unreasonable and, thus violated the defendant's fourth and fourteenth amendment rights.

The defendant had been charged with possession of a controlled substance in violation of section 1402(b) of the Controlled Substances Act. (Ill. Rev. Stat. 1979, ch. 56½, par.

1402(b).) Prior to trial, he moved to suppress ten amphetamine pills found in his purse-like shoulder bag subsequent to his arrest for disturbing the peace. The testimony adduced at the suppression hearing established the following facts:

On September 1, 1980, at approximately 10 p.m., Officer Maurice Mietzner responded to a call about a disturbance at the Town Cinema in Kankakee. When Mietzner arrived, the defendant was arguing with the theater manager. The manager said he wanted to sign a complaint against the defendant for disturbing the peace. According to Mietzner, the defendant continued to yell and scream in the theater, so the officer arrested him for disturbance of the peace. Although the defendant wore a shoulder bag, Mietzner did not remove it. Nor did he "pat down" the defendant for weapons or contraband. Instead, Mietzner handcuffed the defendant and transported him by car to the police station.

In the booking room, the handcuffs were released, and the defendant was ordered to remove any items from his pockets and place them on the counter. The defendant did as ordered. According to Mietzner's testimony, the defendant then reached into his shoulder bag, withdrew a package of cigarettes, and placed the bag on the counter where it was searched. The defendant testified that the police removed the bag from his shoulder and searched it. After "patting down" the bag, Mietzner looked inside a cigarette case package and found ten pills later identified as containing amphetamines. Mietzner stated he was not in fear for his safety when he made the arrest, nor did he expect to find a gun or drugs upon searching the shoulder bag. He searched the bag because "everything" had to inventoried, according to standard police procedure. Mietzner also admitted the defendant's shoulder bag was small enough to be placed and sealed in a larger bag or box for protective purposes.

At the close of the hearing, the prosecution argued the seizure was made incident to a valid inventory search. After taking the matter under advisement, the circuit court summarily suppressed the evidence seized. On appeal, the State advances two grounds for justifying the warrantless search of the shoulder bag at the stationhouse following the defendant's arrest: the search was incident to a lawful custodial arrest, and the search constituted a valid inventorying of the defendant's personal effects upon his arrest. Neither party disputes the lawfulness of the defendant's custodial arrest for disturbance of the peace.

With respect to the State's first argument, that the warrantless search was reasonable because it was incident to a valid custodial arrest, we find the State has waived this argument for the purposes of appeal by failing to raise it at the suppression hearing. (See, *People v. Fuentes* (3rd Dist., 1980), 91 Ill. App. 3d 71, 414 N.E.2d 876.) Moreover, even assuming, *arguendo,* that the State has not waived this argument, the stationhouse search of the shoulder bag did not constitute a valid search incident to a lawful arrest.

A search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention. (*United States v. Edwards* (1974), 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771.) However, the Supreme Court in *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538, appeared to have limited the option of postponing a search incident to arrest by sanctioning only delayed searches of the accused and his clothing. In *Chadwick,* the Court faced the issue of whether a search of a locked footlocker found adjacent to the lawfully arrested defendants could be searched later at the stationhouse without a warrant. The Court rejected the government's argument that the *Edwards* rule applied equally to items within the accused's possession and declared that "warrantless searches of luggage

or other properties seized at the time of the arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest' (*Preston v. United States* (1964), 376 U.S. 364, 367, 84 S. Ct. 881, 884, 11 L. Ed. 2d 777, 780), or no exigency exists." (*United States v. Chadwick* (1977), 433 U.S. 1, 15, 97 S. Ct. 2476, 2485, 53 L. Ed. 2d 538, 550-51.) The justification for the distinction announced in *Chadwick* is that, unlike an accused's person who suffers a substantial diminution in his expectations of privacy once placed under arrest (see, *United States v. Robinson* (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427), possessions within the immediate control of the accused retain their expectations of privacy after arrest. Further, once the officers gain exclusive control of the luggage or personal property not immediately associated with the arrestee, there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed. As Chief Justice Burger and Justice Powell indicated in their concurring opinion in *Arkansas v. Sanders* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. ed. 2d 235, the *Chadwick* rule applies equally to closed containers carried in the hand of the accused. Subsequent case law has demonstrated that the *Chadwick* rule does not depend on whether the container is locked, but whether, judging from the totality of the circumstances, the accused has a reasonable expectation of privacy. See, e.g., *Arkansas v. Sanders,* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (unlocked suitcase); *Robbins v. California* (1981) (29 Crim L. Rep. 3115), ____ U.S. ____, ____ S. Ct. ____, ____ L. Ed. 2d ____ (closed opaque plastic bag); *United States v. Rigales* (5th Cir. 1980), 630 F. 2d 364 (closed backpack); and *United States v. Berry* (7th Cir. 1977), 560 F. 2d 861 (unlocked briefcase).

In applying these principles to the facts presented here, we find the postponed warrantless search of the defendant's shoulder bag to be unreasonable because the purse-like

shoulder bag does carry an expectation of privacy independent of that of the arrestee's body and clothing. Although we recognize several jurisdictions have held otherwise (see, *United States v. Moreno* (9th Cir. 1978), 569 F.2d 1049; *Sumlin v. State* (1979), ____ Ark. ____, 587 S.W.2d 571; *Dawson v. State* (1978), 40 Md. App. 640, 395 A.2d 160; *State v. Horton* (1979), 44 N.C. App. 343, 260 S.E.2d 780), we agree with *People v. Redmond* (1st Dist., 1979), 73 Ill. App. 3d 160, 390 N.E.2d 1364, which declared a warrantless search of the defendant's purse following his arrest to be unreasonable. After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or warrant. Accordingly, because the shoulder bag was in the officer's exclusive possession and because no exigent circumstances existed, the search was not incident to the defendant's arrest.

The State also argues the warrantless search of the defendant's shoulder bag constituted a valid inventorying of its contents according to *South Dakota v. Opperman* (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000. In *Opperman* the Court upheld the inventory search of the contents of an unlocked glove compartment in a lawfully impounded vehicle. Such an intrusion into the vehicle was deemed reasonable because it furthered three legitimate objectives: protection of the owner's property; protection of the police against claims of lost or stolen property; and protection of the police from potentially dangerous contraband. The reasonableness of the inventory search has not been considered by the Supreme Court outside of the circumstances found in *Opperman*. However, the Illinois Supreme Court in *People v. Bayles* (1980), 82 Ill. 2d 128, 411 N.E.2d 1346, refused to

countenance an inventory search of an unlocked suitcase found in the defendant's possession at the time of his arrest and limited the *Opperman* holding to inventory searches of lawfully impounded vehicles. The *Bayles* court, after examining the legitimate objectives for upholding inventory searches offered in *Opperman* in light of the considerably greater privacy interests found in closed personal containers than in vehicles (see, *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538), declared inventorying the contents of a suitcase found in a lawfully impounded vehicle to be, in the absence of exigent circumstances, unreasonable and a violation of the fourth amendment.

Clearly, the instant circumstances presented here, are closer to *Bayles* than to *Opperman*. As we have previously said, the contents of the defendant's purse-like shoulder bag are vested with the same substantial privacy interests as are the contents of a locked trunk (*Chadwick*), an unlocked suitcase (*Sanders*), or a briefcase (*Bayles*). In considering the reasonableness of an inventory search, this substantial privacy interest must be balanced against the three objectives stated in *Opperman*. First we see no possibility of potential harm presented by the defendant's purse, for, as contended by Officer Mietzner, he had no fear for his safety at the time of the search. The two other objectives, preservation of the defendant's property and protection of police from claims of lost or stolen property, "could have been achieved in a less intrusive manner." (*People v. Bayles* (1980), 82 Ill. 2d 128, 143, 411 N.E.2d 1346, 1353.) For example, as Officer Mietzner testified, the defendant's shoulder bag could easily have been secured by sealing it within a plastic bag or box and placing it in a secured locker.

Therefore, the postponed warrantless search of the defendant's shoulder bag was neither incident to his lawful arrest nor a valid inventory of his belongings, and thus, violated the fourth amendment.

Accordingly, we affirm the suppression order entered in the Circuit Court of Kankakee County.

Affirmed.

SCOTT, P.J. and ALLOY, J., concur.

[LETTERHEAD OF ILLINOIS SUPREME COURT]

Robert H. Gillespy
Clerk

February 2, 1982

Hon. Tyrone C. Fahner
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No. 55762 — People State of Illinois, petitioner, vs. Ralph Lafayette, respondent. Leave to appeal, Appellate Court, Third District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Robert H. Gillespy
Clerk of the Supreme Court

Docket No. 54507 — Agenda 24 — September 1981.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellant,
v. CINDY HELM, Appellee.

JUSTICE SIMON delivered the opinion of the court:

Decatur police arrested the defendant, Cindy Helm, at her home at 3 a.m. on a battery charge filed by her ex-husband. He claimed she had hit him in the eye with her fist. The defendant was in bed when police arrived, and when told that she would have to go to the station, Helm dressed, picked up her purse, and accompanied the officers to the station. There, a female desk clerk took her purse and searched it. The clerk, who was not a police officer, found three small diet pills in Helm's coin pouch, which was inside the purse. The defendant was not personally searched, either at her home or at the station, until after her purse was searched. Later lab tests showed that the pills were amphetamines, and Helm was charged with felony possession of a controlled substance. (Ill. Rev. Stat. 1979, ch. 56½, par. 1402(b)). The circuit court of Macon County granted her motion to suppress the pills. The appellate court, in an unpublished order (73 Ill. 2d R.23), affirmed (89 Ill. App. 3d 1206), and this court granted leave to appeal under Rule 315 (73 Ill. 2d R.315).

The search of the defendant's purse was made without a warrant and so was banned by both the fourth amendment to the Federal Constitution and section 6 of the Illinois bill of rights (Ill. Const. 1970, art. 1, sec. 6) unless it was both reasonable and within one of the exceptions to the warrant requirement. *Arkansas v. Sanders* (1979), 442 U.S. 753, 759-60, 61 L. Ed. 2d 235, 242, 99 S. Ct. 2586, 2590-91.

Helm did not consent to the search. (*Cf. People v. Nunn* (1973), 55 Ill. 2d 344, 347.) And, her purse was not being searched under the authority of the "stop and frisk" statute

(Ill. Rev. Stat. 1979, ch. 38, par. 108-1.01), for the arresting officers could not reasonably have suspected by the time they reached the station that they were in danger of attack from Helm.

Nor were the terms of section 108-1 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 108-1) for a search incident to an arrest fulfilled. The purse was not searched to protect the officers from attack, for if that were in fact the rationale, the officers would not have waited to search Helm until after arriving at the police station. They would instead have searched her on the spot of the arrest or would have patted her down in a weapons frisk upon arriving at the station. The purse was not searched to prevent Helm from escaping or passing on its contents to other persons. The purse was being taken away from her and its contents would never go with her into the jail, and so could not be contraband which might fall into the hands of other prisoners or pose a threat to jail security. It was not searched to discover the fruits of Helm's crime — battery, which has no seizable fruits. It was not searched to discover instruments used in the commission of her crime, for she had used only her fist. Because the purse was being taken away from Helm, it was outside the area of immediate control in which a search incident to an arrest is justified. (*Cf. New York v. Belton* (1981), ____ U.S. ____, ____, 69 L. Ed. 2d 768, 776, 101 S. Ct. 2860, 2865; *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467.) The pills, secreted in the coin pouch which was inside the purse, were not in "plain view." *Cf. Chimel v. California* (1969), 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034.

The State seeks to justify the search as an attempt to inventory Helm's possessions incident to a lawful custodial arrest. The normal procedure in the Decatur police station was for the desk clerk to put an arrestee's belongings in a locked strong box under the counter after they were inventoried.

They were kept there until the arrestee was released. A police officer here testified that he had read an inventory slip prepared by the desk clerk pursuant to the search of Helm's purse, but no inventory slip was presented into evidence or appears in the record.

Inventory searches are recognized by statute (Ill. Rev. Stat. 1979, ch. 38, par. 108-2), but are different from other searches exempted from the warrant requirement. The inventory search is not justified by law-enforcement exigencies which threaten the safety of police or make resort to a judge for a warrant impracticable. Instead, an inventory search is made to protect the arrestee's property by putting it in safekeeping while the arrestee is being booked or incarcerated and to insulate the police from later claims by arrestees that their property was stolen or mishandled while in police custody. *People v. Bayles* (1980), 82 Ill. 2d 128; *People v. Hamilton* (1979), 74 Ill. 2d 457, 469.

In *Bayles*, the defendant was trapped under his car after a one-car accident. His luggage was strewn about a nearby field, and a sheriff's deputy inventoried a suitcase and found marijuana. The inventory search was held invalid because the objectives of the inventory could have been achieved in a less intrusive manner. (82 Ill. 2d 128, 143). In *Hamilton,* the defendant had been injured in an automobile accident and was taken to a hospital. The State trooper investigating the accident found the defendant's briefcase on the scene and took it with him to the hospital, where he was going to interview the defendant for his accident report. The defendant was not under arrest. The trooper searched the briefcase while inventorying its contents and found heroin. The drugs were suppressed, the court noting that the purposes of the inventory search could have been served by placing the briefcase in a locked locker or storage room, to protect the defendant's goods, and by sealing it with tape in the presence of a third

party, to guard against later claims of theft. (74 Ill. 2d 457, 471-72.) The court found no reasonable justification for searching the briefcase.

Likewise there was no reasonable justification here. That Helm was under arrest makes no difference; as already noted this was not a search incident to arrest under section 108-1 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 108-1). The police station to which Helm was taken had a locked strongbox which was immediately available for storage to protect her belongings; witnesses (the arresting police officers) were present and could have verified a sealing of the purse by the desk clerk without examination of its contents, as suggested in *Hamilton*. In view of the availability of the strongbox and the minor nature of the charge against Helm, this is the procedure which should have been followed here. Had it been, it would have accomplished everything the inventory of the contents did. One commentator has even pointed out that taking inventory item-by-item does not afford protection against false claims that property was stolen while in police custody.

> "False claims cannot be avoided, and seem more likely when the contents are handled and inventoried (a time when, the owner might later claim, some of his property was taken), as compared to when the container is immediately sealed." 2 W. LaFave, Search and Seizure sec. 5.5, at 360 n.50 (1978).

Under the circumstances presented in this case, the purposes of the inventory could easily have been accomplished in a less intrusive way; having the desk clerk, instead, rummage through Helm's purse was under these circumstances an impermissible search.

Because the warrantless search here did not reasonably fall under an exception to the warrant requirement, the pills were

properly suppressed and the judgment must be affirmed. The conclusion we reach makes it unnecessary to address Helm's contention that the pills were correctly suppressed because she was not informed she had a right to post bail in the amount pre-set for a charge of battery under Rule 528(c) (73 Ill. 2d R. 528(c)). See generally *People v. Seymour* (1979), 80 Ill. App. 3d 221, *rev'd* (1981), 84 Ill. 2d 24.

Judgment affirmed.

JUSTICE WARD, dissenting:

I must dissent from the majority's holding, which I consider shows a misunderstanding of the important question involved here and which unrealistically interferes with booking procedures for persons under custodial arrest at police stations. The majority, in holding the drugs in the purse to have been illegally seized, says that a station inventory could be accomplished in a less intrusive way. That statement gratuitously and erroneously assumes that the search of the purse here was not to be considered as a part of the search of the person and of the inventory process. Too, our inquiry should be whether inventorying the contents of the purse was unreasonable as a matter of law and therefore unconstitutional. The question is not whether a search could be less intrusive. Talk of less intrusive inventory station searches following arrest has been advanced but not accepted. Professor LaFave in his treatise notes that it has been sometimes suggested that the purposes of an inventory could be accomplished by a less intrusive means, but he states: "Currently, such evidence is admissible, and this is generally so even when the inventory has been most thorough. It is customary for the booking inventory to involve an item-by-item examination of everything in the arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search." (2 W. LaFave, Search and Seizure sec. 5.3, at 307 (1978).) (I would observe that we, excepting Justice Simon, who did not participate, very recently

held that strip searches at the police station may be reasonable. Following holdings of the Supreme Court, we held that a full search of a person incident to a lawful custodial search may be made without a warrant and that it may be made even if there is not probable cause to believe that the suspect may have a weapon or destroy evidence. *People v. Seymour* (1981), 84 Ill. 2d 24.)

If we were interested only in reducing the intrusiveness of inventory searches, while barring weapons and contraband from the interior of the jail, the practice of having persons under arrest empty pockets, turn over wallets and the like for purposes of inventory could be abolished. Instead pants, coats and other clothing and property could be sealed in garment bags and jail clothing provided. Pockets and wallets may contain possessions that are as private in character as possessions found in purses. The absurdity, however, of such a procedure is reflected in the practical comment of the court in *People v. Walker* (1975), 58 Mich. App. 519, 525, 228 N.W.2d 443, 446: "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying."

I suspect that police and other law-enforcement officers will judge that the majority's holding discloses an innocence of situations that police encounter on an everyday basis. The court in *United States v. Berry* (7th Cir. 1977), 560 F.2d 861, 864, made the common sense observation that a purse "might be characterized as 'immediately associated with the person of the arrestee'***." Who is able to say what a purse of one under arrest may contain? "Growing Up Underground," an autobiographical reminiscence of Jane Alpert, who was described as a woman radical of the 1960's, was reviewed in December 1981 in a Chicago newspaper. A portion of the review reads: "Several weeks later, as Alpert transported a purse full of dynamite to the New York City Federal Building,

she felt, 'as I imagined I would on my wedding day.'" In October 1981, in New York, a gun battle followed a robbery attempt on an armored truck. Two police officers and a security guard were murdered. Two women members of the so-called radical underground were among those arrested at the time. The public and police would be astonished to find that the search of the women's purses incident to their arrest or when making an inventory at their booking at the police station might be held an unreasonable search and any evidence seized declared to be inadmissible.

The Supreme Court has made it clear that a full search of a person is authorized upon a custodial arrest. In *United States v. Robinson* (1973), 414 U.S. 218, 235, 38 L. Ed. 2d 427, 440-41, 94 S. Ct. 467, 477, the court stated: "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." In *United States v. Edwards* (1974), 415 U.S. 800, 803, 39 L. Ed. 2d 771, 775, 94 S. Ct. 1234, 1237, the court said that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later *** at the place of detention." (See also 2 W. LaFave, Search and Seizure sec. 5.3 (1978).) When the arrested person has been taken to the place of the detention, there may be a search of his person without warrant, and no justification for the individual search is necessary other than that the person was lawfully arrested and is being lawfully detained. Such searches are conducted as searches incident to the arrest, as the taking of an inventory to protect the property of the arrestee, to insure the security of the place of detention and its occupants, and to protect police

officers from false claims of appropriating property of the arrestee. (See 2 W. LaFave, Search and Seizure sec. 5.3 (1978).) A purse may be searched in the course of a search under authority of *Robinson and Edwards*. The court in *United States v. Berry* (7th Cir. 1977), 560 F.2d 861, 864, noted that a purse "might be characterized as 'immediately associated with the person of the arrestee' because it is carried with a person at all times." *United States v. Chadwick* (1977), 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476, does not restrict the force of *Robinson* and *Edwards* here. There it was held that the opening of a footlocker following the arrest of the defendants without a search warrant was improper. The court said, "Once law enforcement officers have reduced luggage or other personal property *not immediately associated with the person* of the arrestee to their exclusive control*** a search of that property is no longer an incident of the arrest." (Emphasis added.) (433 U.S. 1, 15, 53 L. Ed. 2d 538, 551, 97 S. Ct. 2476, 2485.) As we noted in *United States v. Berry,* it was said in discussing *Chadwick* that a purse may be characterized as being immediately associated with the person of the arrestee. A footlocker certainly is not immediately associated with the person and unlike a purse is not carried with a person at all times. Too, and importantly, in *Chadwick* the justification claimed for the search was that it was incident to the arrest. Here, the search of the defendant and her purse were part of an inventory process at the police station.

In *State v. Sabater* (1979), 3 Kan. App. 2d 692, 601 P.2d 11, the court held that a woman's pocketbook is immediately associated with the person and the search of the pocketbook and wallet incident to her arrest was a lawful search. The court rejected the defendant's contention that the search was improper under *Chadwick*. The court said: "The custodial arrest of defendant was a seizure of her person. The search of her pocketbook and wallet was lawful. *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467. We do

not view defendant's pocketbook to have been a repository of personal property coming within the rule enunciated in *Chadwick* ***. We hold defendant's pocketbook was immediately associated with the person of defendant, the arrestee, and the search of the pocketbook involved no greater reduction in her expectations of privacy than that caused by the arrest itself. Accord, *Dawson v. State,* 40 Md. App. 640, 395 A.2d 160, 164-67 (1978)." (3 Kan. App. 2d 692, 694, 601 P.2d 11, 13-14.) LaFave observes that in *Dawson v. State* the court adopted the reasoning of *United States v. Berry* (7th Cir. 1977), 560 F.2d 861. (2 W. LaFave, Search and Seizure sec. 5.5 (1978).) Other decisions upholding searches of purses even on incident-to-arrest grounds (as opposed to the inventory basis) include *Daigger v. State* (1980), 268 Ark. 249, 595 S.W.2d 653, and *Sumlin v. State* (1979), 266 Ark. 697, 587 S.W.2d 571.

The majority's citation of *People v. Bayles* (1980), 82 Ill. 2d 128, and *People v. Hamilton* (1979), 74 Ill. 2d 457, simply misses the mark. What the appellate court in *People v. Keath* (1981), 101 Ill. App. 3d 652, 660, said of these decisions is particularly applicable here:

> "Suffice to say that search in each case was not associated with searches of the person upon custodial arrest, or incident to booking for purposes of custodial detention. Those cases [*Hamilton, Bayles*] were concerned solely with the inventory of baggage obtained following motor accidents."

In *Keath* the court, after an impressively reasoned discussion of the search question, held that drugs, found in a key case and cellophane bag in the defendant's pockets during a routine inventory search at the jail, where the defendant's property was to be stored in a locker, were admissible in evidence.

Though the record is not revealing in this regard, it is not inappropriate to observe that the case here may be of the sad type in which police are called by a friend or relative for the protection and welfare of the defendant. The defendant's former husband complained to the police that the defendant had struck him with her fist. That the police would go to the defendant's home at three o'clock in the morning and take her into custody would be remarkable if it were not for the purpose of seeking to protect the defendant possibly from the drugs she apparently routinely carried with her.

I respectfully submit that the majority has misapprehended and erred.

UNDERWOOD and MORAN, JJ., join in this dissent.

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FILED
DEC 28 1982
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CLERK

No. 81-1859

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court
Of Illinois, Third Judicial District

JOINT APPENDIX

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CERTIORARI GRANTED NOVEMBER 8, 1982

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In The

Supreme Court of the United States

October Term, 1982

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Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

JOINT APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

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Opinion of Illinois Appellate Court, Third Judicial District	September 10, 1981
Order of Illinois Supreme Court denying Leave to Appeal	February 2, 1982

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	No.
VS.	)	80-CF-248
RALPH LAFAYETTE	)	
Defendant	)	

BILL OF INDICTMENT

The Grand Jury charges:

That on September 1, 1980, in Kankakee County, State of Illinois, RALPH LAFAYETTE, Defendant, committed the offense of POSSESSION OF CONTROLLED SUBSTANCE in that said Defendant did knowingly and unlawfully have in his possession less than 200 grams of a substance containing amphetamines, a controlled substance, otherwise than as authorized in the Controlled Substances Act, in violation of Paragraph 1402(b), Chapter 56½, Illinois Revised Statutes.

A TRUE BILL

/s/ Signature Illegible
Foreman

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. ____, CIRCUIT COURT RECORD November 21, 1980.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT: PATRICK M. BURNS, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. Case called. Defendant present in his own proper person and with his attorney Mr. Mark Steffen. People by Mr. William Herzog. Case called for arraignment. The defendant is presented a copy of an indictment charging him with the offense of Possession of a Controlled Substance. The defendant waives reading of the Bill of Indictment and explanation of rights, being duly arraigned pleads not guilty. Cause is ordered placed on the criminal jury calendar. Standard Order on Criminal Pre-trial motions is entered. Paragraph eight motions set for December 30, 1980 at 1:30 p.m. before the Honorable John F. Michela. For further details, see formal order signed and entered. Now comes the State and files their First Report in Compliance with Supreme Court Rule 412. Defendant acknowledges receipt of the same and also acknowledges receipt of the Grand Jury transcript. The defendant is advised that if he fails to appear that a trial may be held in his absence and that constitutes a waiver of his right to confront the witnesses against him. Defendant released on bond previously given.

COURT ADJOURNED TO November 24, 1980 AT 9:30 a.m.

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF KANKAKEE

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	No.
vs.	)	80-CF-248
RALPH LAFAYETTE	)	

MOTION TO QUASH AND SUPPRESS EVIDENCE UNCONSTITUTIONALLY SEIZED

NOW COMES RALPH LAFAYETTE, hereinafter Defendant, and moves this Court to quash the search of his belongings and suppress the evidence seized, to wit: pills and in support thereof states:

1. On September 1, 1980 Defendant's purse was searched by police officers, and;

2. certain pills were seized from said purse;

3. said search was without consent, warrant or probable cause;

4. said search was made and said pills seized in violation of Defendant's rights under the Fourth Amendment of the Constitution of the United States and Section 6 and 10 of Article 2 [sic] of the Constitution of the State of Illinois.

Respectfully submitted,

/s/ MARK R. STEFFEN
Attorney for Defendant

Mark R. Steffen
258 E. Court Street
Suite 503
Kankakee, Ill. 60901
815-935-1211

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. _____, CIRCUIT COURT RECORD December 30, 1980.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT. JOHN F. MICHELA, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. People by Ron Gerts, Assistant State's Attorney. Defendant present with Attorney Mark Steffen, Assistant Public Defender. Hearing called on pre-trial motions. Motion taken under advisement.

COURT ADJOURNED TO December 31, 1980 AT 9:30 a.m.

[5]

IN THE CIRCUIT COURT THEREOF:

STATE OF ILLINOIS)
) SS:
COUNTY OF KANKAKEE)

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) No.
) 80-CF-248
RALPH LAFAYETTE,)
)
Defendant.)

BE IT REMEMBERED that on December 30, 1980 the above-entitled cause came on for hearing on a motion to suppress evidence before the Honorable John F. Michela, Circuit Judge, sitting in Kankakee County Circuit Court, Kankakee, Illinois.

APPEARANCES:

Mr. Ron Gerts,
on behalf of the People;

Mr. Mark Steffen,
on behalf of the Defendant.

[6]

THE COURT: 80-CF-248, People v. Ralph Lafayette.
MR. STEFFEN: Raise your right hand and be sworn.

RALPH LAFAYETTE,

called as a witness herein, having been first duly sworn, was examined upon oral interrogatories, and testified as follows:

DIRECT EXAMINATION

by Mr. Steffen:

Q Would you state your name.
A Ralph Lafayette.
Q And Mr. Lafayette, you are the Defendant in this case, 80-CF-258 [sic], and charged with possession of a controlled substance?
A Yes, I am.
Q That controlled substance being some kind of diet pill?
A Yes.
Q Mr. Lafayette, you were arrested, taken into police custody on September 1, 1980, approximately 10:00 p.m.?
A Yes, I was.
Q And you were at the Town Cinema then?
A Yes, I was.

[7]

Q Did you have some kind of a handbag in your possession then?
A Yes, I did.
Q Where was that handbag?
A It was strapped on my shoulder.
Q And were you arrested at the Town Cinema?
A Yes, I was.
Q And what happened after your arrest?
A I was taken to the City Jail, City Hall.
Q And is this the police officer sitting here that took you there?
A Yes, he is.
Q What happened at the police station?
A Well, like when I got there still had the bag on my shoulder. The officer told me to take everything out of my pocket. I did. He took the bag off of my shoulder. He did—he proceeded like—
Q He took the bag from your shoulder and he went through it?
A Yes.

Q Did he have a warrant for that bag?
A No, sir.
Q Did he ask you your consent to look into that bag?

[8]

A No, he did not.
Q Do you know of any reason for him to look in that bag?
A No, not that I could see of. That's like private, you know, therefore I feel as though, you know, he was going into something that was private without permission.
Q Did he take something from inside of that bag then?
A Yes, he did.
Q And what was that?
A Like pills and stuff wrapped in some foil, plastic or something like that.
Q And to the best of your recollection are those pills and plastic still in the possession of the police department?
A Yes, to my recollection it is.
MR STEFFEN: I have no further questions.

CROSS EXAMINATION

Q Mr. Lafayette, you stated you were arrested at the Town Cinema?
A Yes, I was.
Q And you were arrested for certain ordinance violations

[9]

there?
A You say certain what?
Q Ordinance violations.
A Such as, you know?
Q City ordinances like disturbing the peace?
A Oh, yes, I was.
Q So you were—then after the arrest you were taken by a police officer to the police station?

A Yes, I was.
Q And during the booking processes is when your bag was searched?
A Yes, it was.
Q In the past when you have been arrested you have been searched at booking, haven't you?
MR. STEFFEN: I object, your Honor.
MR. GERTS: The man stated he knows no reason why he was searched and I wish to ask the Defendant if he has been arrested and searched before,—
THE COURT: Searched his bag before that's the question.
MR. GERTS: I think my point is—
THE COURT: He's not complaining about pulling the stuff out of his pockets, throwing it on the counter, you always have to do that, you know.
MR. GERTS: The issue is whether in-custody search after

[10]

arrest the Defendant says he doesn't know why he was searched after arrested, show by his experience he does know [sic].
MR. STEFFEN: That would seem to be not relevant for the motion, some kind of impeachment. I don't think it is relevant or admissible.
THE COURT: The objection is sustained.
MR. GERTS: Okay, thank you, sir.
MR. STEFFEN: Thank you, does the Court have any questions?
THE COURT: Yeah. When you were arrested at the Town Cinema were you patted down?
A No, sir.
THE COURT: Officer Mietzner cuffed you, put you in the car?
A Yes, he did.
THE COURT: And where was your bag during this time?
A On my shoulder.
THE COURT: I see. Did he look in the bag before he put you in the car?

A No, sir.
THE COURT: You got down to the station, right?
A Yes, sir.
THE COURT: And then the—at the station they uncuffed you?

[11]

A Yes, sir.
THE COURT: Where was your bag?
A Still on my shoulder.
THE COURT: And you went over to the little booking area?
A I couldn't hear you.
THE COURT: You went over to the booking area?
A Yes, I did.
THE COURT: Who took the bag off of your shoulder and where did you go from there?
A The officer did. He took me back in the City Hall.
THE COURT: Yeah.
A Okay, officer told me to take everything out of my pocket which I did. And one officer grabbed me and one officer grabbed me, the other one took the bag which this officer did off of my shoulder and threw it on the counter.
THE COURT: Okay, that's all.
MR. STEFFEN: The Defendant would rest, your Honor.
MR. GERTS: Call Officer Mietzner.

MAURICE MIETZNER,

called as a witness herein, having been first duly sworn,

[12]

was examined upon oral interrogatories, and testified as follows:

DIRECT EXAMINATION

by Mr. Gerts:

Q State your name and your occupation, please.
A Sergeant Mietzner, work for the City of Kankakee, Kankakee, Illinois.

Q At—were you so employed on September 1 of this year?

A Yes, sir, I was.

Q Approximately 10:00 p.m. on September 1 of this year were you called to the Town Cinema?

A Yes, sir.

Q What happened there?

A The Manager of the theater called, said he had a few subjects in the theater causing a disturbance and he would like them removed.

Q And what did you do?

A I arrived at the theater and the subject at that time was out in the corridor and the Manager, they was having a few words and the Manager was—advised that he wanted to sign a complaint for disturbing the peace, disrupting the theater.

[13]

Q One of these people the Defendant, Ralph Lafayette?

A Yes, it is.

Q The man sitting here in the courtroom, he's already testified?

A Yes, sir.

Q Okay, when was your first contact with Ralph Lafayette?

A Inside the theater.

Q And what did you do the first time you saw him?

A Well, I tried to get it straightened out there in the theater and he kept on yelling and screaming inside the theater so I advised him that he was under arrest for disturbing the peace.

Q And at that time did he have a shoulder bag?

A Yes, sir, he did.

Q Okay, after you arrested him what did you do?

A Handcuffed him, put him in the squad car and took him to the station.

Q What did you do at the station?

A Took him to the booking room where he was advised to take everything out of his pockets and put them on the counter which he did and he took his shoulder bag which was still on his shoulder—

[14]

Q Was he still in cuffs at this time?
A No, sir.
Q He had been uncuffed?
A Yes, sir.
Q This was prior to the time that he started emptying his pockets. Did the cuffs come off before he started emptying his pockets?
A Yes, sir.
Q Please continue.
A Then he had a—he had a shoulder bag and he had a partial pack of cigarettes inside of it which he took out. He laid the bag up on the counter and when he did I patted the bag. I still felt there was something else in the bag. Then I looked inside the bag and found, I believe, ten pills inside the bag which was in the wrapping of a cigarette case package.
Q Was it in the plastic wrap of a cigarette package?
A Yes, sir.
Q And is it those pills that have led to this charge of possession of controlled substance?
A Yes, sir, they was tested by Detective Furrow to be amphetamines.
Q Valtox tested?
A Yes, sir.

[15]

Q Is there anything else—is there anything else that happened prior to discovery of these pills?
A No, sir, just that they was found during the booking procedure.
Q Is a search at the time of booking a normal police procedure?
A Yes, sir, it is.
Q MR. GERTS: Thank you very much, Officer.

CROSS EXAMINATION

by Mr. Steffen:

Q Officer Mietzner, when you first saw the Defendant he was out in the corridor, what they call the lobby?

A Yes, sir.
Q That's where they have refreshments and things like that?
A Yes, sir.
Q And are you aware that the Defendant was found not guilty on that ordinance violation?
MR. GERTS: Objection, it is irrelevant.
THE COURT: Sustained.
MR. STEFFEN: Q You had conversation with the Defendant for sometime at the Town Cinema, is that correct?
A Yes, sir.

[16]

Q Then when he was, I suppose, professing his innocence it wasn't me that was doing it you got the wrong guy I came to see the show, is that correct?
A He was yelling and screaming out there.
Q There were other people also outside?
A Yes, sir, Mr. Eugene Bell was also arrested at the time.
Q Were there others also arrested?
A Just them two.
Q You transported the Defendant to—did you transport anyone else?
A Just the Defendant.
Q Was there anyone else in your vehicle?
A No, sir.
Q You escorted the Defendant into the police station?
A Yes, sir, I did.
Q Is that when you removed the cuffs after you exited the vehicle and went into the police station?
A I took them off in the booking room.
Q Then did he start filling out forms and things in the booking room?
A He did, yes, sir.
Q Then you asked him to take the stuff out of his

[17]

pockets?

A Yes, sir.
Q Which he did?
A Yes, sir.
Q Then you took the purse off of his arm and put it on the table?
A No, sir, he took the purse off of his arm, took a package of cigarettes out of it. He laid the purse and the cigarettes on the counter at which time I patted the purse
Q When he took the purse off of his shoulder was that upon your request to take this off?
A I advised him to take everything off and put it on the counter.
Q He put the purse on the counter upon your request?
A Yes, sir.
Q You didn't get his permission to look in it, did you, in the purse?
A No, sir, but after he took out the pack of cigarettes he laid it up and I patted the outside. I felt something still inside the purse itself.
Q You felt these pills in a plastic wrapper?
A Yes, sir.
Q The cigarettes the Defendant took out do you remember what brand they were?

[18]

A No, sir, not offhand.
Q Could they have been Virginia Slims?
A I don't believe so.
Q Do you still have the wrapper that the cigarettes or that the pills were wrapped in.
A Yes, sir, it is still in evidence with the pills.
Q Do you still have the purse?
A No, sir, it's been turned back over to Mr. Lafayette.
Q These pills that were tested out are they what are known as diet pills?
A No, sir, to me it was black beauties.
Q Small little black or dark brown pills?
A Yes, sir.
Q You were not in fear of your safety when you arrested the Defendant, were you?

A No, sir.
Q And you didn't pat down that person expecting to find a gun when you were in the purse you didn't expect to find a gun, did you?
A No, sir.
Q Did you expect to find drugs when you went inside the purse?

[19]

A No, sir, I didn't know what was inside of the purse.
Q You were looking in for your own curiosity?
A Yes, sir, everything has got to be inventoried.
Q You have inventory bags and evidence bags at the police station?
A Yes, sir, we do.
Q Do you have a bag large enough to put the purse in?
A There was a small purse there.
Q So the purse you would have had a bag large enough to put the bag in?
A Yes, sir.
Q You could have put the purse in a bag and sealed it up, is that correct?
A Yes, sir.
Q And the Defendant was right there in front of you when you did all of this, when you looked in the purse and everything, the Defendant was standing right there?
A Yes, sir, he was.
Q You have also a locker at the police station that you can lock evidence in?
A Yes, sir.
Q Or lock the Defendant's personal belongings in?

[20]

A Yes, sir.
MR. STEFFEN: I have no further questions.
THE COURT: Mr. Gerts?

REDIRECT EXAMINATION

by Mr. Gerts:

Q Why did you ask the Defendant to empty his pockets and later why did you go into the bag?

MR. STEFFEN: I object, your Honor, it is beyond the scope of cross examination. It should have been on direct examination.

MR. GERTS: No, it is not. What was on your mind concerning the mental state of the officer.

THE COURT: Objection is overruled. You can answer the question.

A Repeat that, please.

MR. GERTS: Q Why did you ask Ralph Lafayette to empty his pockets and why did you go in the purse?

A Like I stated it is standard procedure for anybody being brought in for booking.

Q After an arrest?

A Yes, sir.

Q And was anything that you did with Ralph Lafayette you testified to outside the normal police procedure?

[21]

A No, sir, it is not.

MR. GERTS: Thank you.

MR. STEFFEN: I have no further questions.

THE COURT: Was Lafayette put in jail?

A Yes, sir, he was.

THE COURT: Or did he post bond? He didn't post a bond, he went to his cell?

A There was no bond, controlled substance.

THE COURT: No, I mean when you had him in there to book him on the ordinance violation was he going to sit in the jail cell or was he going to post bond?

A He was getting undressed and going into his cell, yes, sir.

THE COURT: Okay, when you arrest a woman do you search her purse?

A Yes, sir, I do.

THE COURT: Okay, thank you. That's all.

MR. GERTS: That's all the evidence I have.

MR. STEFFEN: Your Honor, I think that this clearly falls under the decision of People vs. Bayles reported in the Appellate decisions.

THE COURT: That's a very recent case. Did you read the whole case?

[22]

MR. STEFFEN: Yes, your Honor.

76 Illinois Appellate Third 843 was the Appellate Decision. The Official Reports I was able to find it today, have the Supreme Court Decision on the case and I believe it is clear that if this was in fact an inventory search, that inventory searches aren't per se reasonable and that in the Bayles case there was a suitcase that was—had some expectation of privacy. That the decision of both the Appellate and the Supreme Court was there was no reason why the police officer couldn't have taped it up and secured it and if he needed a warrant—

THE COURT: It was already secured because the guy was laying upside down in the car after his girlfriend had been killed. He told the passerby to watch the suitcase. The Sheriff said to the Deputy inventory everything and the Deputy opened the suitcase. Take all of that, found all of the money in the shaving kit and everybody knows if there's money in the shaving kit you got to be selling drugs.

MR. STEFFEN: The Bayles case—

THE COURT: I got that. You didn't get that off of my desk, did you?

MR. STEFFEN: No.

THE COURT: That's my copy on the desk.

MR. STEFFEN: Have an analogous purse, could have been put

[23]

in an evidence bag, secured while the Defendant was there, stuck into an evidence locker for him to pick up

later. It wasn't something that he was going to—there was no danger—well, the three reasons for the inventory search being the protection of the officer, for his safety and then the protection of the items might be valuable or claims against the Sheriff or the officer of stealing items and it could have been easily handled by just securing the bag, putting it into an evidence bag and locking it up and I think that the—although it may be their procedure, the Court in Bayles said that regardless of even if it is a standard procedure that they use, it is not reasonable and it is a violation of the Defendant's constitutional right to enter into bags and to look into personal luggage without a warrant or exigent or correct circumstances for search.

THE COURT: Have you seen the Bayles case, Gerts?

MR. GERTS: No, this is my first time.

THE COURT: I will give you a chance to read it. It is an interesting case.

MR. GERTS: I might ask that the Court when he looks at it it either lines up with Bayles or it doesn't. Bayles was an in-custody search, person was about to be placed in a jail cell and property taken from him, it falls within Bayles. If that is not the fact of the Bayles, then Bayles doesn't

[24]

cover the case. I think the question is is there an alternative way to handle that bag because there is an-infinite ways of handling small packages. The question is is there a constitutional bar to looking into that bag.

THE COURT: I will take the matter under advisement. I am sure there is a purse case within the State of Illinois.

MR. STEFFEN: I don't see a specific purse case.

THE COURT: Okay.

MR. STEFFEN: Thank you, your Honor.

THE COURT: You are welcome

(WHICH IS ALL OF THE PROCEEDINGS HAD IN SAID CAUSE ON THIS DATE.)

(Official Court Reporter's certificate omitted in printing)

IN THE
CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN THE
COUNTY OF KANKAKEE
AND
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Case No.
vs.	)	80-CF-248
	)	
RALPH LAFAYETTE,	)	
	)	
Defendant.	)	

BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

Facts:

Defendant Ralph Lafayette was arrested in a Kankakee movie theatre, transported to the Kankakee Police Station, and searched at the station prior to being put in a holding cell. During booking, personal belongings were seized, among them, a shoulder bag containing pills alleged to be controlled substances.

Argument:

The arrest of defendant was lawful. That was not an issue at the hearing on motion to suppress. The inventory of defendant's personal belongings including the shoulder bag occurred after the arrest. The inventory of the shoulder bag was part of a search of defendant's person. The bag contained such personal articles as cigarettes. It was not luggage nor was it a briefcase. It had no lock. It was partially open. It was carried by the defendant as a matter of personal style to carry those articles that other men may put in their pockets or that women may put in a purse used for the same purpose as

defendant's shoulder bag. This was not a search of luggage, a briefcase, or a footlocker, but a search of defendant's person which extended to all of his personal belongings which he had on him at the time.

Illinois statute permits a search of the person pursuant to a lawful arrest. Section 108-1 of Chapter 38 of Illinois Revised Statutes. This search may be a "full search of the person." *People v. Jones*, 56 Ill. App. 3d 414, 371 N.E. 2d 1094, 1096 (1st Dist. 1977). *U.S. v. Robinson*, 414 U.S. 218, 38 L. Ed. 2d 427 (1973).

A search pursuant to a lawful arrest allows the police to inventory the defendant's belongings. *People v. Clark*, 65 Ill. 2d 169 (1976) (the belongings were an automobile). Our Supreme Court stated in the *Clark* case that the purposes of this inventory were, among other things, to protect the police against claims of lost or stolen property, and for the protection of the defendant's property. These purposes have also been recognized by the federal courts. *U.S. v. Keleher*, 470 F. 2d 176, 178 (5th Cir. 1972). *South Dakota v. Opperman*, 428 U.S. 364, 49 L. Ed. 2d 1000 (1976).

With regard to the search of containers, *Opperman* quotes *Keleher* with approval:

> "When the police take custody of any sort of container (such as) an automobile . . . it is reasonable to search the container to itemize the property to be held by the police. (This reflects) the underlying principle that the fourth amendment proscribes only unreasonable searches." *Opperman*, 49 L. Ed. 2d at 1006.

The Illinois Constitution has been interpreted to follow the protection provided by the Fourth Amendment to the United States Constitution and give no further protection against unreasonable search and seizure. *People v. Clark*, 65 Ill. 2d 169, 175 (1976).

On the facts of the instant case, Officer Mietzner looked into a container, a shoulder bag, on the person of the defendant after he was arrested. This was a part of

a search of the person of the defendant immediately prior to his being put in a jail cell. The issue is not whether something else could have been done with the bag, but rather whether Officer Mietzner's actions were proscribed by the constitutions and statutes.

This inventory of defendant's bag is justified as a search of his person and a search of his personal belongings on his body at the time. The policies allowing police to inventory defendant's belongings at the time of his arrest to protect both the defendant and protect the police against false claims of loss or theft of property while in police custody support Officer Mietzner's actions.

PEOPLE OF THE STATE OF ILLINOIS
BY L. PATRICK POWER, STATE'S ATTORNEY

BY /s/ RONALD J. GERTS
Assistant State's Attorney

STATE OF ILLINOIS
IN THE
CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY

No. _____, CIRCUIT COURT RECORD January 26, 1981.

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT: JOHN F. MICHELA, JUDGE
L. PATRICK POWER, STATE'S ATTORNEY
WILLIAM SCROGGINS, SHERIFF
ROGER SERAFINI, CIRCUIT CLERK

Now on this date, case called. Case called for decision on Motion to Suppress Evidence. Motion is allowed. Evidence is suppressed. Clerk to notify Mr. Steffen and State's Attorney.

COURT ADJOURNED TO January 27, 1981 AT 9:30 a.m.

IN THE
CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS
APPEAL TO THE APPELLATE COURT OF ILLINOIS,
TWELFTH [sic] DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Gen. No.
vs.	)	80-CF-248
	)	
RALPH LAFAYETTE	)	
Defendant-Appellee	)	

NOTICE OF APPEAL

Name and address of Appellant: People of the State of Illinois.

Name and address of Appellant's Attorney: L. Patrick Power, State's Attorney, Kankakee County, Courthouse, Kankakee, Ill. 60901.

The offense with which Appellee is charged is: Possession of Controlled Substance which he is alleged to have committed as follows: that he illegally possessed less than 200 grams of Amphetamines on September 1, 1980.

The judgment or order of the Circuit Court, from which this appeal is taken, was entered on: January 26, 1981, and was as follows: allowing Defendant's Motion to Quash and Suppress Evidence Unconstitutionally Seized and also imposed the following sentence: none.

Appellee is presently confined at: not confined.

Appellant hereby appeals to the: Appellate Court of Illinois, THIRD District, from the Judgment or order of the Circuit Court of KANKAKEE County, Illinois, entered in said cause on: January 26, 1981 as aforesaid.

Dated: February 20, 1981.

People of the State of Illinois
Appellant.

/s/ L. PATRICK POWER
Attorney for Appellant.

Clerk of the Circuit Court of
Kankakee County, Illinois.

(Statute provides Notice to be filed in duplicate.)

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 1981

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the) Circuit Court) of the Twelfth
Plaintiff-Appellant,	) Judicial Circuit) Kankakee County,
vs	) Illinois
RALPH LAFAYETTE,	) Honorable) John F. Michela
Defendant-Appellee.	) *Presiding Judge*

Mr. JUSTICE HEIPLE delivered the opinion of the court.

The State appeals from the order of the Circuit Court of Kankakee County which suppressed evidence seized. The issue presented is whether a warrantless search of the defendant's (Ralph LaFayette) shoulder bag, made during booking procedures following a valid custodial arrest, was unreasonable and, thus violated the defendant's fourth and fourteenth amendment rights.

The defendant had been charged with possession of a controlled substance in violation of section 1402(b) of the Controlled Substances Act. (Ill. Rev. Stat. 1979, ch. 56½, par. 1402(b).) Prior to trial, he moved to suppress ten amphetamine pills found in his purse-like shoulder bag subsequent to his arrest for disturbing the peace. The testimony adduced at the suppression hearing established the following facts:

On September 1, 1980, at approximately 10 p.m., Officer Maurice Mietzner responded to a call about a disturbance at the Town Cinema in Kankakee. When Mietzner

arrived, the defendant was arguing with the theater manager. The manager said he wanted to sign a complaint against the defendant for disturbing the peace. According to Mietzner, the defendant continued to yell and scream in the theater, so the officer arrested him for disturbance of the peace. Although the defendant wore a shoulder bag, Mietzner did not remove it. Nor did he "pat down" the defendant for weapons or contraband. Instead, Mietzner handcuffed the defendant and transported him by car to the police station.

In the booking room, the handcuffs were released, and the defendant was ordered to remove any items from his pockets and place them on the counter. The defendant did as ordered. According to Mietzner's testimony, the defendant then reached into his shoulder bag, withdrew a package of cigarettes, and placed the bag on the counter where it was searched. The defendant testified that the police removed the bag from his shoulder and searched it. After "patting down" the bag, Mietzner looked inside a cigarette case package and found ten pills later identified as containing amphetamines. Mietzner stated he was not in fear for his safety when he made the arrest, nor did he expect to find a gun or drugs upon searching the shoulder bag. He searched the bag because "everything" had to inventoried, according to standard police procedure. Mietzner also admitted the defendant's shoulder bag was small enough to be placed and sealed in a larger bag or box for protective purposes.

At the close of the hearing, the prosecution argued the seizure was made incident to a valid inventory search. After taking the matter under advisement, the circuit court summarily suppressed the evidence seized. On appeal, the State advances two grounds for justifying the warrantless search of the shoulder bag at the stationhouse following the defendant's arrest: the search was incident to a lawful custodial arrest, and the search constituted a valid inventorying of the defendant's personal effects upon his arrest. Neither party disputes the lawfulness of the defendant's custodial arrest for disturbance of the peace.

With respect to the State's first argument, that the warrantless search was reasonable because it was incident to a valid custodial arrest, we find the State has waived this argument for the purposes of appeal by failing to raise it at the suppression hearing. (See, *People v. Fuentes* (3rd Dist., 1980), 91 Ill. App. 3d 71, 414 N.E.2d 876.) Moreover, even assuming, *arguendo*, that the State has not waived this argument, the stationhouse search of the shoulder bag did not constitute a valid search incident to a lawful arrest.

A search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention. (*United States v. Edwards* (1974), 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771.) However, the Supreme Court in *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538, appeared to have limited the option of postponing a search incident to arrest by sanctioning only delayed searches of the accused and his clothing. In *Chadwick*, the Court faced the issue of whether a search of a locked footlocker found adjacent to the lawfully arrested defendants could be searched later at the stationhouse without a warrant. The Court rejected the government's argument that the *Edwards* rule applied equally to items within the accused's possession and declared that "warrantless searches of luggage or other properties seized at the time of the arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest' (*Preston v. United States* (1964), 376 U.S. 364, 367, 84 S. Ct. 881, 884, 11 L. Ed. 2d 777, 780), or no exigency exists." (*United States v. Chadwick* (1977), 433 U.S. 1, 15, 97 S. Ct. 2476, 2485, 53 L. Ed. 2d 538, 550-51.) The justification for the distinction announced in *Chadwick* is that, unlike an accused's person who suffers a substantial diminution in his expectations of privacy once placed under arrest (see, *United States v. Robinson* (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427), possessions within the immediate control of the accused retain their expectations of privacy after arrest. Further, once the officers gain exclusive control of the luggage or personal property not immediately associated with the arrestee,

there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed. As Chief Justice Burger and Justice Powell indicated in their concurring opinion in *Arkansas v. Sanders* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. ed. 2d 235, the *Chadwick* rule applies equally to closed containers carried in the hand of the accused. Subsequent case law has demonstrated that the *Chadwick* rule does not depend on whether the container is locked, but whether, judging from the totality of the circumstances, the accused has a reasonable expectation of privacy. See, e.g., *Arkansas v. Sanders*, (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (unlocked suitcase); *Robbins v. California* (1981), ... U.S. ....., 101 S. Ct. 2841, 69 L. Ed. 2d 744 (closed opaque plastic bag); *United States v. Rigales* (5th Cir. 1980), 630 F. 2d 364 (closed backpack); and *United States v. Berry* (7th Cir. 1977), 560 F. 2d 861 (unlocked briefcase).

In applying these principles to the facts presented here, we find the postponed warrantless search of the defendant's shoulder bag to be unreasonable because the purse-like shoulder bag does carry an expectation of privacy independent of that of the arrestee's body and clothing. Although we recognize several jurisdictions have held otherwise (see, *United States v. Moreno* (9th Cir. 1978), 569 F.2d 1049; *Sumlin v. State* (1979), ... Ark. ....., 587 S.W.2d 571; *Dawson v. State* (1978), 40 Md.App. 640, 395 A.2d 160; *State v. Horton* (1979), 44 N.C. App. 343, 260 S.E.2d 780), we agree with *People v. Redmond* (1st Dist., 1979), 73 Ill. App. 3d 160, 390 N.E.2d 1364, which declared a warrantless search of the defendant's purse following his arrest to be unreasonable. After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or warrant. Accordingly, because the shoulder bag was in the officer's exclusive possession and because no exigent circumstances existed, the search was not incident to the defendant's arrest.

The State also argues the warrantless search of the defendant's shoulder bag constituted a valid inventorying of its contents according to *South Dakota v. Opperman* (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000. In *Opperman* the Court upheld the inventory search of the contents of an unlocked glove compartment in a lawfully impounded vehicle. Such an intrusion into the vehicle was deemed reasonable because it furthered three legitimate objectives: protection of the owner's property; protection of the police against claims of lost or stolen property; and protection of the police from potentially dangerous contraband. The reasonableness of the inventory search has not been considered by the Supreme Court outside of the circumstances found in *Opperman*. However, the Illinois Supreme Court in *People v. Bayles* (1980), 82 Ill. 2d 128, 411 N.E.2d 1346, refused to countenance an inventory search of an unlocked suitcase found in the defendant's possession at the time of his arrest and limited the *Opperman* holding to inventory searches of lawfully impounded vehicles. The *Bayles* court, after examining the legitimate objectives for upholding inventory searches offered in *Opperman* in light of the considerably greater privacy interests found in closed personal containers than in vehicles (see, *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538), declared inventorying the contents of a suitcase found in a lawfully impounded vehicle to be, in the absence of exigent circumstances, unreasonable and a violation of the fourth amendment.

Clearly, the instant circumstances presented here, are closer to *Bayles* than to *Opperman*. As we have previously said, the contents of the defendant's purse-like shoulder bag are vested with the same substantial privacy interests as are the contents of a locked trunk (*Chadwick*), an unlocked suitcase (*Sanders*), or a briefcase (*Bayles*). In considering the reasonableness of an inventory search, this substantial privacy interest must be balanced against the three objectives stated in *Opperman*. First we see no possibility of potential harm presented by the defendant's purse, for, as contended by Officer Mietzner, he had no fear for his safety at the time of

the search. The two other objectives, preservation of the defendant's property and protection of police from claims of lost or stolen property, "could have been achieved in a less intrusive manner." (*People v. Bayles* (1980), 82 Ill. 2d 128, 143, 411 N.E.2d 1346, 1353.) For example, as Officer Mietzner testified, the defendant's shoulder bag could easily have been secured by sealing it within a plastic bag or box and placing it in a secured locker.

Therefore, the postponed warrantless search of the defendant's shoulder bag was neither incident to his lawful arrest nor a valid inventory of his belongings, and thus, violated the fourth amendment.

Accordingly, we affirm the suppression order entered in the Circuit Court of Kankakee County.

Affirmed.

SCOTT, P.J. and ALLOY, J., concur.

[LETTERHEAD OF THE
ILLINOIS SUPREME COURT]

Robert H. Gillespy
Clerk

February 2, 1982

Hon. Tyrone C. Fahner
Attorney General
Criminal Justice Division
188 W. Randolph St.
Chicago, Ill. 60601

No. 55762—People State of Illinois, petitioner, vs. Ralph Lafayette, respondent. Leave to appeal, Appellate Court, Third District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ ROBERT H. GILLESPY
Clerk of the Supreme Court

No. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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OF COUNSEL

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should review a point which the Appellate Court held was waived but discussed in dicta.

2. Whether during booking procedures the police may conduct a warrantless search of a purse in their custody as a delayed search incident to an arrest, despite the absence of any exigent circumstances.

3. Whether a warrantless inventory search of the purse during booking procedures is reasonable where the legitimate objectives of an inventory search could easily be achieved by sealing the purse and placing it in a secured locker.

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No. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 99 Ill. App. 3d 830, 425 N.E. 2d 1383 (3rd Dist. 1981).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition For Writ of Certiorari. (Petition at 1-2) However, as treated more fully in the argument portion of this Brief In Opposition, which this Court requested be filed by June 24, 1982, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted those provisions of the United States Constitution applicable to this Case. (Petition at 2)

STATEMENT OF THE CASE

While the Petitioner's Statement of the Case is generally adequate for an understanding of the questions presented it omits important facts. Specifically, the Petitioner fails to make note that Officer Mietzner testified that defendant placed his purse on the counter pursuant to Mietzner's request (R17). Additionally, Mietzner indicated that he did not expect to find a gun or drugs when he searched the purse (R18-19).

REASONS FOR DENYING THE WRIT

I.

PETITIONER CONCEDES THAT THE APPELLATE COURT HELD THAT THE STATE WAIVED THE ARGUMENT THAT THE SEARCH WAS A VALID SEARCH INCIDENT TO ARREST, BUT ASKS THIS COURT TO REVIEW DICTA IN THE APPELLATE COURT'S DECISION. THIS REQUEST IS NOT COMPELLING SINCE THE REVIEW OF DICTA IS NOT A MATTER OF CONSTITUTIONAL URGENCY.

Petitioner concedes that the Appellate Court held that it waived the argument that the search was a valid search incident to arrest (Petition at 4). As noted by the court, the Petitioner failed to argue this point at the suppression hearing and, therefore pursuant to Illinois procedural rules, the argument was waived on appeal. People v. Lafayette, 99 Ill. App. 3d 830, 425 N.E. 2d 1383, 1385 (3rd Dist. 1981). Petitioner does not ask this Court to review the waiver holding, but instead requests that this Court address dicta in the court's opinion. Such a request lacks merit and provides no compelling ground for allowing the writ. See Henry v. Mississippi, 379 U.S. 443, 85 S. Ct. 564, 13 L. Ed. 2d 408 (1965).

II.

IN ANY EVENT, THE APPELLATE COURT'S DICTA TO THE EFFECT THAT THE SEARCH WAS NOT A VALID SEARCH INCIDENT TO AN ARREST IS CORRECT. THE SEARCH OF DEFENDANT'S PURSE WAS REMOTE IN TIME AND PLACE FROM THE ARREST AND NO EXIGENT CIRCUMSTANCES WERE PRESENT.

The Appellate Court in dicta indicated that the postponed warrantless search of defendant's purse was unreasonable because the purse was in the officer's exclusive possession and because no exigent circumstances existed. 425 N.E. 2d at 1385. The court also noted that the officer had no fear that the purse was a refuge for a weapon or other contraband. 425 N.E. 2d at 1385. This dicta is correct.

The purpose of the search-incident-to-arrest exception to the warrant requirement is that a contemporaneous search of the arrestee and the area within his immediate control will enable the police to protect themselves from concealed weapons and prevent the destruction of readily available evidence. Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). This exception is narrow in scope, however. The search incident to arrest must be strictly tied to and justified by the circumstances which rendered its initiation permissible. Accordingly, the search incident to arrest must be conducted as a contemporaneous incident of that arrest. New York v. Belton, ___ U.S. ___, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981); United States v. Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977).

In Chadwick, the Court rejected a similar argument that the search of luggage could be made as a delayed search incident to arrest:

> [W]arrantless searches of luggage or other properties seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from

> the arrest," Preston v. United States, 376 U.S. at 367, 11 L. Ed. 2d 777, 84 S. Ct. 881, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest. 433 U.S. at 15, 53 L. Ed. 2d at 550, 551, 90 S. Ct. at 2485.

As noted by the Appellate Court in this case, once the purse was secured, no exigent circumstances remained. There was no danger that the respondent would obtain a weapon or destroy evidence. Moreover, the officer did not even suspect that the purse contained contraband or evidence of a crime. Accordingly, there was no ground to conduct a postponed warrantless search of the purse. The court's dicta is thus directly supported by this Court's decisions and those of other courts. See People v. Bayles, 82 Ill. 2d 128, 411 N.E. 2d 1346 (1980); People v. Helm, 89 Ill. 2d 34, 431 N.E. 2d 1033 (1981); United States v. Schleis, 582 F. 2d 1166 (8th Cir. 1978); Bradford v. State, 401 N.E. 2d 77 (Ind. App. 1980).

The Petitioner relies on this Court's decision in United States v. Edwards, 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771 (1974). That case involved the search of person arrested, not the search of his intimate belongings. When a search of luggage is involved, there must be exigent circumstances or a warrant. Chadwick; People v. Bayles.

The Petitioner's writ should be denied. In short, no compelling reasons exist for this Court to review dicta, which, in any event, is correct and well reasoned.

III.

IN ILLINOIS A PURSE MAY NOT BE SEARCHED AS PART OF AN INVENTORY WHERE IT CAN BE SEALED AND PLACED IN A SECURED LOCKER. THIS RULE IS CONSISTENT WITH THE DECISIONS OF THIS COURT. SECURING THE PURSE IS FAR LESS INTRUSIVE THAN SEARCHING IT AND ACHIEVES THE OBJECTIVES OF THE INVENTORY: THE PROPERTY IS PROTECTED AND THE POLICE ARE PROTECTED FROM FALSE CLAIMS OF LOST OR STOLEN PROPERTY. AN INVENTORY SEARCH UNDER CONDITIONS WHERE THE OBJECTIVES OF THE INVENTORY COULD BE ACHIEVED WITHOUT A SEARCH IS UNREASONABLE. THERE IS NO NEED FOR THIS COURT TO REVIEW THE HOLDING OF THE APPELLATE COURT WHICH WAS CORRECTLY DECIDED.

An inventory exception to the search warrant requirement has been applied to motor vehicles. South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). In that case this Court upheld the inventorying of the contents of an impounded vehicle. This Court noted that the expectation of privacy in the contents of an automobile was "significantly less" than that relating to one's home and that routine inventory served three legitimate objectives: (1) protection of the owner's property; (2) protection of police against false claims of lost or stolen property; and (3) protection of police from potential danger.

Illinois courts, including the Appellate Court in this case, have refused to apply the inventory exception to the search of luggage where the legitimate objectives of the inventory could have been achieved by sealing the container and placing it in a secured locker. People v. Helm, 89 Ill. 2d 34, 431 N.E. 2d 1033 (1981); People v. Bayles, 82 Ill. 2d 128, 411 N.E. 2d 1346 (1980); People v. Hamilton, 74 Ill. 2d 457, 386 N.E. 2d 53 (1979); People v. Redmond, 73 Ill. App. 3d 160, 390 N.E. 2d 1364 (1st Dist. 1979). The Illinois courts reason that there is a high privacy interest in the contents of luggage as opposed to that relating to one's car. See United States v.

Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977). In considering the validity of an inventory search, the courts balance this high privacy interest in the luggage against the three legitimate objectives of an inventory noted in Opperman and enumerated above. If these objectives can be achieved without a search, then any search would be unreasonable.

In this case, the third objective, which is to protect the police from danger, is not presented by the facts.[1] The two other objectives, preservation of the property and protection of police from claims of lost or stolen property, could have been achieved by sealing the purse and securing it in a locker. Given the reasonableness standard of the Fourth Amendment, the less intrusive actions of sealing and securing the purse should have been taken as opposed to searching a container that carried high privacy interests.

The reasoning of the Illinois Courts, including the Appellate Court in this case, is thus sound. A correct result has been reached and there is no compelling need for this Court to address this matter.

---

[1] Officer Mietzner testified that he had no fear for his safety at the time of the search.

CONCLUSION

For the foregoing reasons, respondent prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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This Brief was prepared with the assistance of Pat Woodward, a law student at the University of Iowa School of Law, presently employed by the Office of the State Appellate Defender.

NO. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Ralph Lafayette, by and through his counsel, Robert Agostinelli, Deputy Defender, Office of the State Appellate Defender, Third Judicial District, requests leave to file the Attached Brief for Respondent in Opposition, without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 46. The Respondent was previously granted leave to proceed in forma pauperis in this cause both in the Illinois Appellate and Supreme Courts.

The Respondent's affidavit in support of this Motion is attached hereto.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 22nd day
of June, 1982.

Charlene McWilliams
NOTARY PUBLIC

No. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

I, Ralph Lafayette, being first duly sworn according to law, depose and say, in support of my Motion for Leave to Proceed without being required to prepay costs and fees:

1. I am the Respondent in the above-entitled cause.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said cause.

5. I was determined to be indigent by the Circuit Court of Kankakee County, Illinois and counsel was appointed to represent me on appeal to the Illinois Appellate and Supreme Courts.

FURTHER Affiant sayeth not.

RALPH LAFAYETTE

SUBSCRIBED AND SWORN TO
Before me this ____day
of_____, 1982.

NOTARY PUBLIC

NO. 81-1359

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

CERTIFICATE OF SERVICE

I, Robert Agostinelli, a member of the bar of this Court and representing Respondent in this cause, certify:

1) That I have served one copy of the Motion for Leave to Proceed in Forma Pauperis, the Affidavit in support thereof, and Brief for Respondent in Opposition on Counsel for Petitioner, by depositing same in a United States Post Office mail box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid, and with the envelope addressed as follows:

Honorable Tyrone Fahner
Attorney General
188 West Randolph-Suite 2200
Chicago, Illinois 60601

2) The above named party is the only party required to be served.

Robert Agostinelli
ROBERT AGOSTINELLI

DATED: 6/22/82

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No. 81-1859

Supreme Court, U.S.
FILED
JAN 10 1983
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S OPENING BRIEF ON MERITS

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PETITION FOR WRIT OF CERTIORARI FILED APRIL 8, 1982
CERTIORARI GRANTED NOVEMBER 8, 1982

QUESTION PRESENTED FOR REVIEW

Whether the police may search a lawfully arrested individual and a purse he is carrying, without a warrant, as part of a normal booking procedure following a lawful arrest at another location.

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In The

Supreme Court of the United States

October Term, 1982

No. 81-1859

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S OPENING BRIEF ON MERITS

OPINION BELOW

The decision of the Appellate Court of Illinois in this case is reported as *People v. Lafayette*, 99 Ill.App.3d 830, 425 N.E.2d 1383 (3d Dist. 1981). The order of the Illinois Supreme Court denying leave to appeal is unreported. The order of the Circuit Court of Kankakee County granting defendant's motion to suppress is unreported also.

JURISDICTION OF THE COURT

The opinion of the Appellate Court of Illinois was filed on September 10, 1982. The Illinois Supreme Court rendered its order denying leave to appeal on February 2, 1982. The petition for certiorari was filed within sixty days of that order. This Court granted certiorari on November 8, 1982.

This Court's jurisdiction rests on 28 U.S.C. Sec. 1257(3), because throughout the state court proceedings in this matter, respondent has asserted an alleged violation of his rights under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV, provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, provides that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or im-

munities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

On September 1, 1980, the City of Kankakee police lawfully arrested defendant-respondent, Ralph Lafayette, for disturbing the peace. The manager of the Town Cinema in Kankakee had called the police and asked that they remove Lafayette for causing a disturbance in the theater lobby. When the police arrived, Lafayette continued yelling at the theater manager inside the lobby. Accordingly, the police advised him that he was under arrest for disturbing the peace and took him into custody. (A. at 11).

Respondent wore a purse-type shoulder bag at the time of his arrest. The police did not remove the shoulder bag and conducted no search or pat down of respondent and his purse at the theater. The arresting officer, Sergeant Mitzner, handcuffed respondent, put him in the squad car and took him to the Kankakee police station. (A. at 12).

When they arrived at the station, Sergeant Mitzner took respondent directly to the booking room and removed the handcuffs. Respondent decided he would not make bond and instead would spend the night in jail. In accordance with standard booking procedures, the police asked him to empty his pockets, which he did willingly. They then instructed him to remove his street clothing so

he could be taken to his cell. (A. at 14, 16). Respondent then took the purse off his shoulder, placed it on the counter and removed a pack of cigarettes from it. After respondent removed the cigarettes, Sergeant Mitzner patted the outside of the purse and felt something remaining inside. The officer then reached in the purse and removed ten small black pills wrapped inside the plastic wrap of a cigarette package. (A. at 14). A Valtox test performed on the pills determined that they were amphetamines. The police then charged respondent with possession of a controlled substance. The Kankakee County grand jury indicted him on that charge. (A. at 2).

The defendant filed a pre-trial motion to suppress the amphetamines as evidence. (A. at 4). He argued that the warrantless search of his purse during police booking procedures following his valid arrest violated his rights under the fourth and fourteenth amendments. At the suppression hearing, the State presented evidence detailing the events of the arrest and booking and argued simply that there was no, "constitutional bar to looking into [the] bag." (A. at 18). In the State's trial court brief in opposition to the motion to suppress, it argued that the search was a valid inventory (A. at 20, 21) and lawful as a "full search of the person." (A. at 20). Without enunciating the reasons for its decision, the Circuit Court of Kankakee County granted the motion to suppress. (A. at 22). The People of the State of Illinois appealed the suppression order.

On appeal, the State argued that the warrantless stationhouse search of the lawfully arrested defendant was valid on two grounds. First, the State argued that the search was valid as incident to a lawful custodial arrest. Second, it contended that the search constituted a valid inventory of the personal effects of a lawfully detained

defendant. The Appellate Court of Illinois rejected the State's arguments and affirmed the decision of the trial court.

The Appellate Court concluded that the State failed to raise the argument that the search was valid as incident to a lawful arrest at the trial level. Accordingly, the court held that the State waived the argument on appeal. (A. at 27). The court noted, however, that even if the argument was raised, the search violated the fourth amendment. It reasoned that the search went beyond a search of the accused and his clothing, and the police did not suspect that the purse contained weapons or evidence. (A. at 28). The court also held that the search did not constitute a valid inventory of defendant's possessions. The court reasoned that under the circumstances, the defendant's expectation of privacy in the purse outweighed the interests of police safety, preservation of the defendant's property and protection of the police from claims of lost or stolen property. (A. at 30).

The Illinois Supreme Court denied the State leave to appeal. (A. at 31). This case now comes before this Court on writ of certiorari.

SUMMARY OF ARGUMENT

Police may conduct a warrantless search of an individual under lawful arrest. The search of an individual under lawful arrest has been traditionally deemed reasonable and therefore, an exception to the warrant requirement. It is uncontested that respondent was under lawful arrest. Accordingly, the search of his person and personal effects was reasonable and did not violate the fourth amendment.

The authority to search, established by a lawful arrest, provides the rationale for two separate types of searches. First, it provides the basis for the general search incident to arrest. Second, it provides the basis for the inventory search of an arrestee's personal effects. In this case, however, this Court need not draw distinctions between the two types of searches. Because the fact of lawful arrest establishes the authority to search in both instances, an inventory search may be justified upon the additional ground that it is a search incident to arrest. A custodial arrest based on probable cause is a reasonable intrusion under the fourth amendment. Once a court determines that the arrest is lawful, a search resulting from that arrest requires no additional justification. *United States v. Robinson*, 414 U.S. 218 (1973). Accordingly, the search of respondent after his arrest was reasonable and did not violate the fourth amendment.

The Appellate Court of Illinois erred in holding that the search of respondent was unreasonable and not a valid search incident to arrest. In both the trial and appellate courts, the State argued that the search constituted a proper search incident to arrest, as well as a valid inventory. The State neither made contrary assertions

nor acquiesced in contrary findings by the lower court. Thus, the State properly raised the issue of search incident to arrest and did not waive that question on appeal. *Steagald v. United States*, 451 U.S. 204 (1981).

A search incident to arrest may occur at the police station as well as at the place of arrest. *United States v. Edwards*, 415 U.S. 800 (1974). It is reasonable for police to examine and hold as evidence those personal effects of an arrestee that they already have in their custody as the result of a lawful arrest. A search incident to arrest may include the examination of containers that an arrestee is wearing or carrying at the time of arrest. *United States v. Robinson*, *supra*. The police need not suspect that an arrestee is concealing a weapon or contraband. *Id.* The lawful arrest establishes the authority to search. No further justification is needed. Thus, the search of respondent after his arrest was reasonable and a valid search incident to arrest.

The Appellate Court of Illinois erred in holding that the search of respondent was unreasonable and not a valid inventory. It is customary for an inventory to involve a complete item-by-item examination of everything in possession of the arrestee at the place of detention. This may include inspection of his pockets and other containers in his possession. The authority to conduct an inventory, like the authority to conduct a search incident to arrest, derives from the fact of lawful arrest. Although the arrest establishes the authority to inventory, four generally recognized interests are advanced by such a search: (1) protection of an arrestee's property while he is in jail; (2) protection of police from false claims of stolen or lost goods; (3) protection of the security of the police and detention facility; and (4) ascertainment of the identity of the arrestee. The inventory of respondent's personal effects protected each of those interests.

The Appellate Court of Illinois incorrectly held that a full inventory violates the fourth amendment if the interests advanced by an inventory could be protected without a complete item-by-item search of an arrestee's personal effects. This analysis fails to recognize that the validity of a search depends upon whether the police acted reasonably and had the authority to search; and not on whether a particular search fulfills the interests traditionally advanced by that type of search. *Id.* The lawful arrest of respondent authorized the inventory of his personal effects. No additional justification for the inventory was needed.

The holding of the Appellate Court of Illinois, moreover, imposes unrealistic requirements on the police officers who must conduct inventories daily. It requires that police engage in a free form balancing of complex issues to determine whether each inventory they conduct protects the interests traditionally advanced by inventories. In this case, the police maintained a good faith belief that they acted reasonably and within the law in applying the standard inventory procedure to respondent who was under lawful arrest. The purpose of the exclusionary rule is to deter unlawful police conduct. That purpose is not served when a court suppresses evidence obtained through a reasonable standard inventory conducted by police who maintained a good faith belief that they acted reasonably and within the law.

Respondent was under lawful arrest. Accordingly, a search of him and his personal effects at the police station was reasonable. The search, therefore, did not violate the fourth amendment.

ARGUMENT

I.

POLICE MAY CONDUCT THE WARRANTLESS SEARCH OF AN INDIVIDUAL UNDER LAWFUL ARREST.

The decision of the Appellate Court of Illinois affirming the trial court's suppression of the narcotics seized from respondent was incorrect. The search of respondent's purse required no warrant because it was undertaken in accordance with standard police procedure, while respondent was in police custody after a valid arrest in a public place.

"The fourth amendment does not denounce all searches and seizures, but only such as are unreasonable." *Carrol v. United States*, 267 U.S. 132, 147 (1923). The "fundamental inquiry in considering Fourth Amendment issues is whether a search is reasonable under all the circumstances." *United States v. Chadwick*, 433 U.S. 1, 9 (1977) *citing*, *Cooper v. California*, 386 U.S. 58 (1967). Accordingly, "[t]he prevailing rule under the Fourth Amendment that searches and seizures may not be made without a warrant is subject to various exceptions." *United States v. Edwards*, 415 U.S. 800, 802 (1974).

The search of a person under lawful police arrest has been traditionally deemed reasonable and, therefore, an exception to the warrant requirement. *United States v. Robinson*, 414 U.S. 218 (1973); *Chimel v. California*, 395 U.S. 752 (1969); *Weeks v. United States*, 232 U.S. 383 (1914). In *United States v. Robinson*, this Court settled any doubts concerning the reasonableness of the warrantless search of a person under lawful custodial arrest. The defendant in *Robinson* was arrested for operating a

motor vehicle without a valid permit. The arresting police officer performed a standard post-arrest frisk and felt something unusual in the defendant's coat pocket. The officer reached in the pocket and discovered a crumpled cigarette package which contained heroin filled capsules. In upholding the warrantless search of the defendant, this Court stated:

> It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

414 U.S. at 235.

The authority to search, established by a lawful arrest, provides the rationale for two separate traditional types of custodial searches. First, it provides the basis for the general search incident to arrest. *United States v. Robinson, supra.* Second, it provides the basis for the inventory search of an arrestee's personal effects. *South Dakota v. Opperman,* 428 U.S. 364 (1976). The warrantless search of respondent is justified as either type of search.

This Court, however, need not draw distinctions between the two types of searches because the fact of lawful arrest establishes the authority to search in both instances. A search of a person under lawful arrest is a reasonable search. Noting that the fact of lawful arrest justifies the search of an arrestee, Professor LaFave has stated, "a pre-incarceration inventory may be justified upon the additional ground that it is a search incident to arrest." 2 W. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment,* 309 (1978).

Respondent was lawfully arrested. The lawful arrest established the authority of the Kankakee police to search

him. Accordingly, the search of respondent was reasonable and did not violate the fourth amendment.

II.

THE SEARCH OF RESPONDENT WHILE HE WAS UNDER LAWFUL ARREST CONSTITUTED A VALID SEARCH INCIDENT TO ARREST.

Police may search a lawfully arrested individual and his personal effects at the police station. The Appellate Court of Illinois erred in finding that the search of respondent was not a valid search incident to arrest.

A. The State Properly Argued In The Lower Court That The Search Constituted A Valid Search Incident To Arrest.

In both the trial and appellate courts, the State argued that the search of respondent constituted a proper search incident to arrest, as well as a valid inventory. The Appellate Court of Illinois erred in holding that at the trial level, the State failed to raise the argument that the search was a proper search incident to arrest and therefore, it waived that issue on appeal.

In *Steagald v. United States*, 451 U.S. 204 (1981), this Court set forth the standard for determining whether the government has waived an issue on appeal. The case involved the search of a home by government agents. The agents lacked a warrant for the search of the home but entered and searched pursuant to an arrest warrant for an individual they suspected was in the home. Although the agents failed to find the subject of the warrant, they found contraband which led to the narcotics arrest and indictment of the defendant, the owner of the home. The defendant moved to suppress the evidence claiming that the government's warrantless search violated the fourth amendment. The trial court denied his motion. In the

trial court proceedings, the government asserted that the house was directly connected with the defendant. Moreover, the government acquiesced in statements by the lower court which characterized the search as one of the defendant's residence.

On appeal to this Court, the government argued that the defendant lacked standing to contest the search of the home because the record below did not clearly show that he had a possessory interest in the home. The Court held that the government waived that issue on appeal. The Court reasoned that the government acknowledged the defendant's expectation of privacy when it asserted the house was connected with the defendant and acquiesced in the lower court's characterization of the home. It stated that the government waives an issue, "when it has made contrary assertions in the courts below, when it has acquiesced in contrary findings by those courts, or when it has failed to raise such questions in a timely fashion during the litigation." *Id.* at 209.

In *People v. Keller*, Ill. Sup. Ct. No. 55745 (1982), the Illinois Supreme Court followed *Steagald* in determining the question of waiver of an issue on appeal. Like *Steagald*, *Keller* involved the government's argument on appeal that the defendants lacked standing to challenge the validity of a search. The court applied the test enunciated in *Steagald* and concluded that no waiver occurred.

The Appellate Court of Illinois ignored the holding and analysis of *Steagald* in determining that the State waived the issue of search incident to arrest in this case. The State argued at both the trial and appellate levels that the search was valid as incident to arrest. It neither made contrary assertions nor acquiesced in contrary findings by the lower court. At the suppression hearing, the State presented evidence detailing the arrest and booking. At

the close of the hearing, the Kankakee County Assistant State's Attorney summarized the State's view of the case by stating, "[t]he question is is there a constitutional bar to looking into that bag." (A. at 18).

After the hearing, but before the court's decision on the motion to suppress, the State submitted a brief in opposition to the motion. In that brief the State argued:

> Illinois statute permits a search of the person pursuant to a lawful arrest. Section 108-1 of Chapter 38 of Illinois Revised Statutes. [sic] This search may be a full search of the person. *People v. Jones*, 56 Ill. App.3d 414, 371 N.E.2d 1096 (1st Dist. 1977). *U.S. v. Robinson*, 414 U.S. 218, 38 L. Ed.2d 427 (1973).

(A. at 20). Thus, the State properly raised the issue of whether the search constituted a valid search incident to arrest in a timely fashion at the trial level. In support of its argument, the State cited *United States v. Robinson*, the leading authority supporting such a search.

The State also argued that the search constituted a valid inventory. That argument, however, does not contradict the argument that the search was proper as incident to arrest because, "a pre-incarceration inventory may be justified upon the additional ground that it is a search incident to arrest." 2 W. LaFave, *supra* at 309. Accordingly, the State has consistently argued that the search constituted a valid search incident to arrest. Thus, the issue was not waived on appeal.

Moreover, the Appellate Court of Illinois discussed the question of search incident to arrest. Thus, this Court may decide that issue. *Jenkins v. Georgia*, 418 U.S. 153 (1974); *Raley v. Ohio*, 360 U.S. 423 (1959).

B. The Search Incident To Arrest Was Appropriate At The Police Station As Well As At The Place Of Arrest.

A valid search incident to arrest may be conducted at the place of detention as well as at the place of arrest. Circumstances surrounding an arrest may result in the delay of a full search. "A police officer's determination as to how and where to search the person of a suspect who he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search." *United States v. Robinson*, 414 U.S. at 235. In *United States v. Edwards*, this Court stated:

> It is also plain that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention. If need be, *Abel v. United States*, 362 U.S. 217, 4 L.Ed.2d 668, 80 S.Ct. 683 (1960), settled this question.

415 U.S. at 803.

In *Abel v. United States*, the Court upheld the delayed search of a defendant's belongings subsequent to an administrative arrest. Federal agents arrested the defendant at his hotel and allowed him to bring along whatever belongings he wished to take with him. The agents then searched those belongings when they arrived at the place of detention. The defendant argued that the search violated the fourth amendment because it was remote from the time and place of the arrest. This Court stated that because the items searched were subject to search at the time of arrest, it:

> [did] not think it significantly different, when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to

> the place of detention has additional justifications, similar to those which justify a search of the person of one who is arrested.

362 U.S. at 239.

United States v. Edwards follows this authority. *Edwards* involved the full search of a criminal defendant's clothing at the city jail approximately 10 hours after his arrest. The police believed the defendant's clothing might contain evidence of the crime. The defendant argued that the police could not search his clothing after completion of the booking process and the mechanics of the arrest. This Court held that, "[w]ith or without probable cause, the authorities were entitled at that point not only to search the defendant's clothing but also to take it from him and keep it in official custody." 415 U.S. at 804. The Court reasoned that, "it is difficult to perceive what is unreasonable about the police examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as a result of a lawful arrest." *Id.* at 777.

Similarly, in this case, it is difficult to perceive what is unreasonable about the Kankakee police examining the personal effects of respondent during the standard booking procedure following his lawful arrest. Respondent maintained control over the items in his pockets and his purse until he was searched in the course of the standard booking procedure. The police searched only items immediately associated with the person of respondent after he was already in their custody as a result of a lawful arrest. Thus, the stationhouse search of respondent constituted a valid search incident to arrest.

C. The Police Could Search Respondent And His Purse Without Suspecting That He Was Concealing A Weapon Or Contraband After Lawful Arrest.

Police need no independent justification to conduct a full search incident to a lawful custodial arrest. In this case, the Appellate Court of Illinois incorrectly determined that independent justification for the search was needed. The court stated that once an accused has been "secured," absent exigent circumstances, an officer may not conduct a full search if he does not believe the arrestee is harboring a weapon or contraband. (A. at 28). This analysis conflicts with the holdings of this Court.

The traditional rationale for allowing a search incident to lawful arrest includes concerns for police safety and the discovery of evidence. As this Court stated in *Angnello v. United States*, 269 U.S. 20 (1925):

> The right without a search warrant contemporaneously to search persons lawfully arrested while committing a crime and to search the place where the arrest is made in order to find and seize things connected with the crime as the fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted.

Id. at 30. *See also, Weeks v. United States*, 232 U.S. at 392 (police may search an arrestee to "seize fruits or evidences of crime") *citing*, 1 Bishop on Criminal Procedure Sec. 211; Wharton, *Criminal Pleading and Practice*, 8th ed. Sec. 60; *Dillon v. O'Brian and Davis*, 16 Cox CC 245.

The Appellate Court of Illinois, however, erred in concluding that concerns for police safety and the seizure of evidence are the only justification for a search incident to arrest. Those concerns are merely interests advanced by such a search and not the ultimate authority allowing it. In *United States v. Robinson*, this Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and discover evidence, does not depend upon what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification.

414 U.S. at 235. In upholding the search of the defendant in *Robinson*, the Court concluded, "it is of no moment that [police officer] Jenks did not indicate any subjective fear or that he did not himself suspect that respondent was armed." *Id.* at 236.

Similarly, in this case, it is of no moment that Sergeant Mitzner did not indicate any subjective fear or that he did not himself suspect that the defendant was armed or concealing contraband. Respondent's lawful arrest justified the search. The police needed no probable cause or independent justification to search respondent's purse and seize the illegal narcotics he possessed.

D. Respondent's Purse Was A Container Subject To Search Incident To Arrest.

A search incident to arrest may include the examination of containers that an arrestee is wearing or carrying at the time of the arrest. Respondent wore a purse fastened with a shoulder strap at the time of his arrest. He continued wearing the purse while handcuffed in the police car. The police searched the purse only when they fully searched respondent's person at the police station when it was determined he would spend the night in jail. Accordingly, the search of the purse was part of the valid search incident to arrest.

This Court has traditionally upheld the search of containers in the possession of a defendant at the time of arrest. "A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents." *United States v. Ross*, 50 U.S.L.W. 4580, 4588 (June 2, 1982). In *United States v. Robinson*, the Court upheld the search of two containers in the possession of the defendant. Although the defendant was arrested for driving without a valid permit, the police officer searched inside the defendant's pocket. The officer then searched inside a cigarette package found inside the pocket. Without discussing the propriety of searching such containers, the Court upheld the search. Accordingly, the fourth amendment does not prevent the search of containers in a defendant's possession at the time of arrest.

This Court's decision in *United States v. Chadwick*, 433 U.S. 1 (1977), does not change this rule. *Chadwick* involved the search of a defendant arrested for drug trafficking. At the time of the arrest, government agents seized a double-locked footlocker from the defendant's automobile trunk. Without securing a search warrant, the agents opened the footlocker at the Federal Building one and a half hours after the arrest. The footlocker remained in the exclusive control of the agents from the time of the arrest until the time it was opened.

The defendant argued that the warrantless search violated the fourth amendment. The government contended, "that the Fourth Amendment Warrant Clause protects only interests traditionally identified with the home." *Id.* at 6. The government did not argue that the search was valid as incident to arrest but instead argued only the, "extreme view of the Fourth Amendment that would restrict the protection of the Warrant Clause to

private dwellings and a few other 'high privacy' areas." *Id.* at 17. (Blackmun, J., dissenting).

The Court held that the protections for the warrant clause extend beyond the confines of the home. It, therefore, found that the search of the double-locked footlocker violated the fourth amendment.

This case differs from *Chadwick* both in its facts and in the legal arguments advanced. The government in *Chadwick* advanced an extreme interpretation of the fourth amendment, arguing that the warrant clause does not apply outside the home. In contrast, petitioner in this case advances a traditional interpretation of the fourth amendment, arguing that a lawful arrest gives police the authority to conduct a full search of the arrestee. The container searched in *Chadwick* was a double-locked footlocker which was not in the defendant's immediate possession at the time of the arrest or the time of the search. In contrast, the container searched in this case was simply a purse worn by respondent at the time of the arrest. Moreover, respondent continued wearing the purse until the time of the search when he placed it on the counter in front of the officer who performed the search. Thus, *Chadwick* is distinguishable from the case at bar.

Cases following *Chadwick* indicate that containers in a defendant's immediate possession may be searched subsequent to a lawful arrest. *New York v. Belton*, 453 U.S. 454 (1981), this Court's most recent discussion of the search of a container in the possession of an arrestee, arose in the context of a search of an arrested automobile occupant. Although this Court has traditionally drawn a distinction between the highway search of an automobile and other types of searches, the Court's reasoning and holding rest on the rationale of search incident to arrest rather than

the "automobile exception." *See, Carroll v. United States*, 267 U.S. 132 (1925).

In *Belton*, this Court held that police may search containers found within the passenger compartment of an automobile, subsequent to the lawful arrest of its occupants. The defendant and three other men were lawfully arrested for possession of marijuana. The police patted down each of the men and then placed them in different areas of the highway so they would not be in contact with each other. The officer then searched the passenger compartment and found a jacket on the back seat. He unzipped one of the pockets and discovered cocaine.

The lower court held the search invalid. The court reasoned that the search of the pockets of the defendant's jacket was barred because by seizing the jacket the police gained "exclusive control" of its contents and, therefore, no further search was justified. *People v. Belton*, 50 N.Y.2d 447, 451, 407 N.E.2d 420, 422 (1980). This Court rejected the lower court's reasoning stating, "under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.'" 453 U.S. at 461, n.5. Accordingly, the Court held that the search did not violate the fourth amendment because it was reasonable.

This Court defined "container" as, "any object capable of holding another object . . . [including] luggage, boxes, bags, clothing and the like." *Id.* at 461, n.4. The Court noted that, "these containers will sometimes be such that they could hold neither a weapon nor evidence for which the suspect was arrested." *Id.* at 461. Nevertheless, the Court concluded that such containers are subject to search incident to a lawful custodial arrest because the

authority to search derives from the fact of the lawful arrest. *Citing, United States v. Robinson.*

In *United States v. Ross*, 50 U.S.L.W. 4580 (June 2, 1982), this Court discussed the pre-arrest warrantless search of automobiles. Although the case did not confront the question of search incident to arrest, it did address court-fashioned distinctions among containers subjected to lawful search. The Court stated that once a reasonable search is undertaken, such distinctions, "must give way to the interest in prompt and efficient completion of the task at hand." *Id.* at 4586-87. The Court reasoned:

> This rule applies equally to all containers, . . . a constitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction.

Id. at 4587.

The search of respondent's purse was reasonable and therefore, did not offend the fourth amendment. His lawful arrest authorized a full search of his person and containers within his possession as a search incident to arrest.

III.

THE SEARCH OF RESPONDENT'S PURSE WAS A VALID INVENTORY OF THE EFFECTS OF A PERSON IN POLICE CUSTODY AS THE RESULT OF A LAWFUL ARREST.

Police may inventory the personal effects of an individual in custody as the result of a lawful arrest. The Appellate Court of Illinois erred in determining that the police could not conduct an inventory search of respondent and his personal effects including his purse.

A. The Lawful Arrest Of Respondent Authorized The Full Inventory Search Of His Personal Effects.

The authority to conduct an inventory search, like the authority to conduct a search incident to arrest, derives from the fact of lawful arrest. *United States v. Robinson, supra; United States v. Edwards, supra. See also,* 2 W. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment,* 302-09 (1978). The inventory may consist of a thorough inspection of items in the possession of the arrestee at the place of detention. "It is customary for the booking inventory to involve an item-by-item examination of everything in an arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search." 2 W. LaFave, *supra* at 307.

Although the arrest establishes the authority to conduct an inventory, this Court has recognized three interests advanced by such a search: (1) protection of an arrestee's property while he is in jail; (2) protection of the police from groundless claims that they have not adequately safeguarded the defendant's property; and (3) security of the detention facility by preventing the introduction therein of objects which could be used to attempt an escape or by which harm might be done to some prisoner. *South Dakota v. Opperman,* 428 U.S. 364, 369 (1976). Professor LaFave suggests an additional interest advanced is the ascertainment or verification of the identity of the person being incarcerated. *See,* 2 W. LaFave, *supra* at 307.

Some lower courts, including the Appellate Court of Illinois in this case, have held that a full inventory of an arrestee's belongings violates the fourth amendment if the interests advanced by an inventory could be protected without a complete item-by-item search of the arrestee's personal effects. *See, e.g., People v. Helm,* 89 Ill.2d 34, 431

N.E.2d 1033 (1981); *State v. Gelvin*, 318 N.W.2d 302 (N.D. 1982).[1] This approach imposes unrealistic requirements on the police officers who must conduct inventories daily. It requires that the police determine whether every inventory search they conduct fulfills each of the interests traditionally advanced by such searches. This Court has refused to require police to engage in such a complex analysis. In *New York v. Belton*, the Court explained the necessity for clear-cut rules governing police conduct. Quoting one commentator, the Court stated:

> 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.'

---

[1] In *People v. Helm*, Justice Ward's dissenting opinion points out the illogic of this analysis, stating:

> If we were interested only in reducing the intrusiveness of inventory searches, while barring weapons and contraband from the interior of the jail, the practice of having persons under arrest empty pockets, turn over wallets and the like for purposes of inventory could be abolished. Instead pants, coats and other clothing and property could be sealed in garment bags and jail clothing provided. Pockets and wallets may contain possessions that are as private in character as possessions found in purses. The absurdity, however, of such a procedure is reflected in the practical comment of the court in *People v. Walker* (1975), 58 Mich. App. 519, 525, 228 N.W.2d 443, 446: "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying."

453 U.S. at 141, *quoting* LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S.Ct. Rev. 127, 141 (1974). The decision of the Appellate Court of Illinois requires that police engage in a free form balancing of complex issues and policies each time they inventory a defendant's belongings. Accordingly, the decision obscures the central purposes of the fourth amendment and confuses the intent of the exclusionary rule.

The holding of the Appellate Court of Illinois, moreover, fails to recognize that the validity of a search depends upon whether the police had authority to search and not on whether a particular search fulfills the interests traditionally advanced by that type of search. This Court made that clear in *United States v. Robinson*, when it noted that the discovery of weapons and contraband are interests advanced by a search incident to arrest, but held that such a search is valid even if the police do not suspect that they will find weapons or contraband. The Court reasoned:

> A custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification.

414 U.S. at 223. Thus, whether a particular inventory protects the interests traditionally advanced by such a search is irrelevant to a determination of the reasonableness of the inventory. The lawful arrest of an individual authorizes the full inventory of his belongings.

B. The Inventory Of Respondent's Personal Effects Protected The Interests Traditionally Advanced By An Inventory Search.

The inventory process benefits both the police and the defendant. Four primary interests are advanced by an in-

ventory search: protection of the owner's property while it remains in police custody; protection of the police from false claims of stolen or lost goods; protection of the security of the police and the detention facility; and confirmation or ascertainment of the identity of the defendant. The inventory of respondent's personal effects, including his purse, was necessary to protect those four interests.

The Kankakee police inventoried respondent's belongings in his presence, in accordance with standard departmental procedures. (A. at 12). The inventory occurred when it was determined that respondent would remain in police cusody; after the arrest but before he was taken to his jail cell for the night. By ascertaining and cataloguing respondent's possessions, the police were able to provide the proper security for them. The inventory procedure allows police to compare their record with the items returned to a pre-trial detainee upon his release to ensure that he receives all that is rightfully his and to prevent the detainee from claiming that the police failed to return something which he possessed at the time of his detention.

The inventory search makes certain that pre-trial detainees bring no weapons, contraband or items, which could facilitate escape, into the detention facility. This Court recognized the importance of a thorough search for this purpose in *Bell v. Wolfish*, 441 U.S. 520 (1979), when it upheld visual body cavity searches of pre-trial detainees and prisoners at the New York Metropolitan Correctional Center. The Court reasoned that so intrusive a search could be allowed because the security of a detention facility is of such great importance. The inventory also allows police to verify a pre-trial detainee's identity by comparing the identification information provided by the detainee with any additional information found among his personal effects. The inventory search of

respondent, pursuant to standard procedures, ensured the protection of the interests traditionally advanced by an inventory.

A pre-trial detainee retains no expectation of privacy which justifies limiting a search. "Given the realities of institutional confinement, any reasonable expectation of privacy that a detainee [retains] necessarily would be of diminished scope." *Bell* at 557.

The police maintained a good faith belief that they acted reasonably and within the law in applying the standard inventory procedure to respondent, a lawfully arrested pre-trial detainee. The evidence they discovered, therefore, should not be suppressed. The purpose of the exclusionary rule is deterence of unlawful police conduct. *Mapp v. Ohio*, 367 U.S. 643 (1961). That purpose is not served by the suppression of evidence in this case. In *Michigan v. DeFillippo*, 443 U.S. 31 (1979), this Court stated:

> Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality—with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement.

Id. at 38.

Similarly, in this case, society would be ill-served if the police were required to engage in an ad hoc balancing, considering the time from arrest to inventory and the container searched, each time they conduct a standard inventory of the belongings brought by a lawfully arrested person to the place of detention. Respondent's lawful

arrest established the authority of the police to search him and his personal effects at the place of detention. Accordingly, the search was reasonable and did not violate the fourth amendment.

CONCLUSION

For the foregoing reasons the decision of the Appellate Court of Illinois should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

RALPH LAFAYETTE,
Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the inventory search of Lafayette's shoulder bag was unreasonable because Lafayette had a high expectation of privacy in the contents of the bag and there was no need for the police to search inside it.

II. Whether review of the search as incident to the arrest should be precluded since the lower court based its decision on an adequate state ground.

III. Whether the station-house search of Lafayette's shoulder bag, in which he had a high expectation of privacy independent of that in his body and clothing, can be upheld as a delayed search incident to the arrest.

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STATEMENT

The Statement of the Case in petitioner's brief contains unfounded assertions and inaccuracies and also omits facts which are material to the consideration of the questions presented.

Specifically, the state asserts that the record shows that "Respondent decided he would not make bond and instead would spend the night in jail" (Brief for Petitioner at 3). The testimony reveals only the following:

> "THE COURT: Was Lafayette put in jail?
>
> [Officer Mietzner] A. Yes, sir, he was.
>
> THE COURT: Or did he post bond? He didn't post a bond, he went to his cell?
>
> A. There was no bond, controlled substance.
>
> THE COURT: No, I mean when you had him in there to book him on the ordinance violation was he going to sit in the jail cell or was he going to post bond?
>
> A. He was getting undressed and going into his cell, yes, sir." (J.A. 16).

Accordingly, the state's assertions regarding bond are unfounded. The record is simply silent with respect to these matters and even whether Lafayette was offered an opportunity to make bond. (See also Brief for Petitioner at 17, 25)

Another unfounded assertion in the Statement is that Lafayette emptied his pockets "willingly" (Brief for Petitioner at 3). Although Lafayette emptied his pockets upon an order from the police, there is no evidence or finding that he did so willingly (J.A. 10).

Additionally, the state omits relevant facts. At the suppression hearing, Mietzner testified that he patted the outside of the shoulder bag, felt something inside, and then looked inside out of curiosity and because "everything [had] to be inventoried" (J.A. 12, 14-15). The officer was not in fear of his safety when he arrested Lafayette and did not expect to find a

gun or drugs in the bag (J.A. 14-15). Mietzner also testified that the bag could have been sealed inside an inventory or evidence bag and locked in a locker (J.A. 15). Furthermore, the testimony reveals that more than one officer was present when the bag was searched (J.A. 10) and that Mietzner searched the bag without consent (J.A. 8).

Petitioner also erroneously asserts certain testimony as fact, although contradictory testimony, which the state fails to mention, is contained in the record. Based on Officer Mietzner's testimony, the state asserts as a fact that Lafayette "took the purse off his shoulder, placed it on the counter and removed a pack of cigarettes from it" (Brief for Petitioner at 4).[1] The state does not report, however, that Mietzner's testimony of this sequence was contradicted by Lafayette's testimony. He testified that, when one officer grabbed him, Mietzner removed the bag from his shoulder and threw it on the counter (J.A. 7, 10). Since no finding of fact was made by the Illinois courts regarding this conflict, the state should not assert Mietzner's testimony as fact.[2] (See also Brief for Petitioner at 19)

The state also asserts that, at the close of the suppression hearing, it "argued simply that there was no, [sic] 'constitutional bar to looking into [the] bag' " (Brief for Petitioner at 4). Actually, as the appellate court found, the state, at the close of the hearing, argued only that there had been a valid inventory search (J.A. 26). This argument was made in re-

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[1] This summary of Mietzner's testimony itself is inaccurate with respect to the timing of the events. Mietzner actually testified that Lafayette took the shoulder bag off his arm, removed a package of cigarettes and then laid the bag and cigarettes on the counter (J.A. 14).

[2] Where a trial judge makes no express findings, a reviewing court in Illinois is bound to view the evidence based on the testimony most favorable to the prevailing party unless it is clearly unreasonable. *People* v. *Haskell*, 41 Ill. 2d 25, 241 N.E.2d 430, 433 (1968).

sponse to Lafayette's assertion that the case was controlled by *People* v. *Bayles*, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), *cert. denied*, 453 U.S. 923 (1981), a case which involved only an inventory question. Specifically, the state argued that the court should determine whether *Bayles* controlled and whether there was an alternative way to handle the shoulder bag (J.A. 17-18).

Finally, the state also does not accurately report the appellate court's finding regarding waiver. The state asserts that the appellate court held that it had waived the argument that the search was incident to arrest by failing to raise it "at the trial level" (Brief for Petitioner at 5). Actually the appellate court held that the state waived the search-incident-to-arrest argument by failing to raise it "at the suppression hearing" (J.A. 26-27). In this regard the state does not point out that its trial court brief in opposition to the motion to suppress, which, according to the state, raised the search-incident-to-arrest question, was filed twenty days after the hearing (J.A. 1, 6, 19).

SUMMARY OF ARGUMENT

The fact of lawful arrest does not, as the state maintains, authorize both a search incident to arrest and a full inventory of the arrestee's belongings. Unlike a search incident to arrest, an inventory, which arises in a non-criminal context, is justified by the lawful custody of property and is conducted for reasons primarily related to that property. *South Dakota* v. *Opperman*, 428 U.S. 364 (1976). Consequently, separate consideration of these theories is essential.

I. The inventory of Lafayette's shoulder bag was unreasonable since the interests advanced to justify it were outweighed by his privacy interests in the bag. *Opperman*. Although *Opperman* upheld the inventory search of a car, it did not authorize an inventory of a repository of personal effects. In *Opperman* the Court held that a routine automobile inventory, found by lower courts to be essential to perform caretaking functions, was reasonable.

Implicit in *Opperman*, however, is a limitation: an inventory must be reasonable in scope. Consequently, a majority of courts considering inventories of containers have employed this same analysis in finding such searches unreasonable in scope. There is a greater expectation of privacy in a container than in an automobile and such expectation is not reduced by virtue of an arrest. Furthermore, safeguarding a shoulder bag presents none of the substantial burdens involved in caretaking automobiles. *Arkansas* v. *Sanders*, 442 U.S. 753 (1977). Courts have thus found virtually no need for the inventories since the containers can be sealed, secured and inventoried as a unit.

The state urges that *Opperman* be extended to authorize station-house inventories, relying on four interests purportedly necessitating them: safeguarding the property, protecting the police from claims of lost or stolen property, maintaining jail security and preventing harm to police, and ascertaining or verifying identity. Sealing, securing and inventorying containers as a unit adequately serve the first three interests. Thieves, vandals, or prisoners can have no access to the locked property. Similarly, inventorying containers without opening them actually minimizes property claims since the contents will never have been touched by police. The fourth interest, the need to ascertain identity, is generally served by merely asking for identification.

In this case there was no need to inventory the contents of the bag. Officer Mietzner concluded that no danger existed and the contents could easily have been safeguarded by sealing the shoulder bag in an evidence bag and placing it in a locker. Furthermore, the officer claimed no need to verify Lafayette's identity. Other facts suggesting the inventory was unreasonable were the failures: to seek Lafayette's consent, to advise him of the purpose of the inventory, and to permit him to post bond or make other arrangements for the caretaking of his belongings. Therefore, because there was no need to inventory the contents of Lafayette's shoulder bag, in which he had a substantial expectation of privacy, the inventory was un-

reasonable. The state's contention that suppression is not required in light of the purported good faith of the police was waived since it was not raised below. In any event, no good faith was shown since the police procedure is contrary to established Illinois law.

II. Review of the search as incident to arrest should be precluded since the appellate court rejected the issue on an adequate state ground. *Herb* v. *Pitcairn*, 324 U.S. 117 (1945). As the state concedes, the court below based its decision entirely on waiver, finding the state failed to raise the issue of the search as incident to arrest in a timely fashion. The mere discussion by the appellate court of the federal question in dicta does not warrant review by this Court. The waiver holding was proper since the state did not raise the issue at the suppression hearing.

Application of the Illinois waiver rule in this case serves two legitimate state interests since, as a result of the state's untimely raising of the issue, the court below was precluded from hearing an adequate presentation of the facts and was prevented from considering an additional state ground. *Cardinale* v. *Louisiana*, 394 U.S. 437 (1969). Review of the federal question is particularly inappropriate in light of the state's failure to contest the waiver issue in Illinois courts.

III. Assuming, arguendo, the issue is properly before this Court, the search, being remote in time and place from the arrest, was nevertheless beyond the scope of the search-incident exception and, in any event, unreasonable. While an arrest justifies a warrantless contemporaneous search of the person and the area within his immediate control to remove weapons and to prevent the loss of evidence, the scope of the search must be consistent with these purposes. *Chimel* v. *California*, 395 U.S. 752 (1969). Thus this Court has placed both temporal and spatial limitations on the exceptions. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968). *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Arkansas* v. *Sanders*, 442 U.S. 753 (1977), reaffirmed these limitations. In both cases the Court found that, in the absence of any exigency, a

warrant was necessary to search a container since the high expectation of privacy in such container was not reduced by virtue of the arrest.

Lafayette's privacy interest in his shoulder bag was not reduced merely because of his arrest. A warrant was required for the delayed search of the bag since the search was not based on any exigency and the bag was securely in the control of police. Although the state asserts, contrary to the appellate court finding, that the bag was not in Mietzner's exclusive control, the testimony to that effect was controverted and thus cannot, under Illinois law, be accepted as fact. In any event, the search was unreasonable in light of the surrounding circumstances. Mietzner patted the bag and did not believe any contraband or guns were in it. Given the absence of probable cause or any exigency, the search was particularly unreasonable.

United States v. *Robinson*, 414 U.S. 218 (1973), and *United States* v. *Edwards*, 415 U.S. 800 (1974), do not control this case since neither case considered the propriety of the delayed search of a repository for personal effects. Although *Edwards* suggested that property carried from the place of arrest by the arrestee may later be seized and searched, the holding was expressly limited to the facts. *Abel* v. *United States*, 362 U.S. 217 (1960), relied on in *Edwards*, is distinguishable from this case because a search begun at the time of arrest was continued later and was limited to property the arrestee chose to bring with him. Furthermore, *Abel's* continuing validity is questionable due to its reliance on precedent subsequently overruled and its inconsistency with *Chadwick* and *Sanders*.

The Government contends that Lafayette's privacy interest in his bag was reduced by virtue of the arrest because the bag was "immediately associated with the person." This phrase from *Chadwick* refers to clothing and not repositories being carried, such as shoulder bags. Although some courts apply a case-by-case test based on this phrase, this test has proven to be unworkable. In any event, this Court recognized in *United States* v. *Ross*, ___ U.S. ___, 102 S. Ct. ___, 72 L. Ed. 2d

572 (1982), that constitutional distinctions between containers are impermissible. The more workable rule, which protects privacy interests, is that advanced by Lafayette: containers accessible to the arrestee may be searched without a warrant at the time of arrest; however, once the accused is secured at the station and the container removed from his reach, a warrant is required.

ARGUMENT

The state argues that the fact of lawful arrest of an individual authorizes both a search incident to arrest and a full inventory of his belongings (Brief for Petitioner at 6). While it is true that a lawful arrest authorizes a search incident to arrest [*United States* v. *Robinson*, 414 U.S. 218 (1973)], the arrest itself does not, as the state contends, also authorize an inventory search. Virtually every court and commentator recognizes that a station-house inventory search of an arrestee's effects is not authorized by virtue of the arrest or the booking process itself, but rather by the fact that the police have lawful custody of belongings which they must safeguard.[3] Thus no inventory search of an arrestee's effects is authorized if the police are without reason to maintain custody of the effects, such as when

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[3] *See, e.g., United States* v. *Robinson*, 414 U.S. 218, 258 n.7 (1973) (Marshall, J., dissenting); *United States* v. *Mills*, 472 F.2d 1231 (D.C. Cir. 1972); *Zehrung* v. *State*, 569 P.2d 189, 193 (Alas. 1977), *modified*, 573 P.2d 858 (1978); *United States* v. *Davis*, 501 F. Supp. 23 (N.D. Ga. 1980), *aff'd*, 647 F.2d 1119 (5th Cir. 1981); *People* v. *Dixon*, 392 Mich. 691, 222 N.W.2d 749, 756 (1974); *State* v. *Carner*, 28 Wash. App. 439, 624 P.2d 204 (1981); *Manalansan* v. *State*, 48 Md. App. 667, 415 A.2d 308, 311 (1980); 2 W. LaFave, *Search and Seizure* § 5.3, at 306, and § 5.5, at 356 (1978); Note, 53 B.U.L. Rev. 858, 864 (1973). This principle is also implicit in the holdings of several other cases. See cases *infra* nn. 8 & 9.

It should be noted that there was no arrest in *South Dakota* v. *Opperman*, 428 U.S. 364 (1976). The Court upheld an inventory search of a lawfully impounded automobile because of the caretaking functions which were imposed upon the police.

an arrestee is released on bail or makes other arrangements for the safekeeping of his belongings. *See, e.g., United States* v. *Wilson*, 636 F.2d 1161, 1165 (8th Cir. 1980); *State* v. *Slockbower*, 79 N.J. 1, 397 A.2d 1050, 1055 (1979).

The reasons for conducting these searches are also different. An inventory search may be conducted for the protection of the owner's property and protection of the police against disputes over lost or stolen property. *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976). On the other hand, a search incident to arrest is permitted in order to protect the officer from the arrestee and to prevent the destruction of evidence. *Chimel* v. *California*, 395 U.S. 752 (1969).

There are other fundamental differences as well. For example, since an inventory search involves a non-criminal context, its analysis does not include an examination of probable cause or the warrant requirement. *Opperman*, 428 U.S. at 370 n. 5. In contrast, a search incident to arrest arises in a criminal context and is viewed as "a traditional exception to the warrant requirement." *Robinson*, 414 U.S. at 224.

The state's melding of these two separate theories thus is erroneous. Each type of search merits consideration within its own particular analytical framework.

In part I of Lafayette's argument it will be shown that there was no need for the police to conduct an inventory search of the contents of the shoulder bag, in which he had a high expectation of privacy. In part II Lafayette will demonstrate that review of the search as one incident to the arrest should be precluded by the holding of the court below on an adequate state ground—the waiver of this issue for failure to raise it in a timely fashion. Finally, in part III it will be shown that the search, in any event, was unreasonable and beyond the scope of the search-incident-to-arrest exception to the warrant requirement because it was remote in time and place from the arrest and conducted without any exigency or probable cause.

I. THE INVENTORY SEARCH OF LAFAYETTE'S SHOULDER BAG WAS UNREASONABLE BECAUSE LAFAYETTE HAD A HIGH EXPECTATION OF PRIVACY IN THE CONTENTS OF THE BAG AND THERE WAS NO NEED FOR THE POLICE TO SEARCH INSIDE IT.

The inventory "search"[4] of the contents of Ralph Lafayette's shoulder bag cannot withstand scrutiny under the Fourth Amendment standard of reasonableness—the standard which inventory searches must meet. *South Dakota* v. *Opperman*, 428 U.S. 364 (1976). Essentially, the test for determining reasonableness involves a balancing of the interests advanced to justify the intrusion against the interest of the individual in the privacy of his effects. *Camara* v. *Municipal Court*, 387 U.S. 523, 535-37 (1967); *Opperman*, 428 U.S. at 377-78 (Powell, J., concurring). In applying this test this Court should examine "all the facts and circumstances of this case in light of the principles set forth in . . . prior decisions." 428 U.S. at 375.

A. *Opperman* Did Not Authorize Inventory Searches Of The Contents Of Repositories Of Personal Effects, Such As Shoulder Bags, In Which There Is A High Expectation Of Privacy.

The Court in *Opperman* found that the inventory search of the contents of a glove compartment in an automobile which had been lawfully impounded met the reasonableness standard. It must be emphasized, however, that the instant case involves an inventory in a different context: a station-house

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[4] Whether or not an inventory constitutes a "search" for Fourth Amendment purposes would not appear to be a critical question in this case since the state has never argued that the inventory was exempt from the Fourth Amendment standard of reasonableness. *South Dakota* v. *Opperman*, 428 U.S. 364, 371 n.6 (1976). In any event, Lafayette's position is that an inventory does constitute a search. *See South Dakota* v. *Opperman*, 428 U.S. at 377 n.1 (Powell, J., concurring); 428 U.S. at 385 n.2 (Marshall, J., dissenting). *See also* 2 W. LaFave, *Search and Seizure* § 5.3, at 306 & n.23 (1978).

search of a shoulder bag pursuant to the Kankakee Police Department's policy to inventory "everything" that accompanies an arrestee to the station (J.A. 15). The inventory involved property which the police had taken from Lafayette and not effects which were going to accompany him into the jail cell. *See Bell* v. *Wolfish*, 441 U.S. 520 (1979).

There are fundamental distinctions between automobile and station-house inventories. The expectation of privacy in the contents of a shoulder bag, a repository for personal effects, is substantially higher than that in an automobile. As was noted by Justice Powell in a concurring opinion in *Rakas* v. *Illinois*, 439 U.S. 128, 153-54 (1978): "Nothing is better established in Fourth Amendment jurisprudence than the distinction between one's expectation of privacy in an automobile and one's expectation when in other locations." Moreover, as this Court has recognized, the expectation of privacy in repositories accompanying or being carried by a person at the time of arrest is not reduced by virtue of an arrest. *United States* v. *Chadwick*, 433 U.S. 1, 16 n.10 (1977); *Arkansas* v. *Sanders*, 442 U.S. 753, 766-67 (1979) (Burger, C.J., concurring).[5]

Not only are the privacy interests distinct, but the need to conduct a search in each type of inventory is different. Unlike the significant burdens and specific problems involved in the caretaking of automobiles, which make an inventory search essential, no comparable burdens or problems are involved in safeguarding repositories of personal effects such as shoulder bags. *Arkansas* v. *Sanders*, 442 U.S. at 765 n.14. Accordingly,

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[5] The Government, in its amicus brief, argues that "privacy concerns have little relevance in the case of routine inspection of the contents of a container for purposes unrelated to seeking evidence of a crime" (Brief for Government at 26). This argument is an anomaly, since it is absurd to argue that Fourth Amendment privacy protections fully apply only to an individual suspected of criminal behavior. *See Opperman*, 428 U.S. at 385 n.2 (Marshall, J., dissenting).

there is no need to conduct an inventory of the contents of a bag to be kept at the station.

A close look at *Opperman* demonstrates that its holding is limited to its facts and does not authorize the search of repositories of personal effects. In *Opperman*, the Court concluded that routine inventory searches of the contents of lawfully impounded automobiles were reasonable. Interests recognized to justify such intrusions included: (1) protection of the owner's property while it remains in police custody; (2) protection of the police against claims or disputes over lost or stolen property; and (3) protection of the police from potential danger.[6] 428 U.S. at 369. These interests favoring intrusion were found to outweigh the citizen's interest in the privacy of the contents of his automobile, particularly since that privacy interest was recognized to be significantly less than the expectation of privacy associated with one's home. The Court noted that the practice of inventorying the contents of an automobile had been almost uniformly found by the states to be "essential to respond to incidents of theft or vandalism." 428 U.S. at 369.

With respect to the record before it in *Opperman*, the Court upheld the routine inventory search of the contents of a glove compartment. The Court noted that the car had been legally impounded, the owner was not present to make other arrangements for the safekeeping of his belongings, and the routine inventory was prompted by the presence in plain view of certain valuables. 428 U.S. at 375.

The Court also found, in footnote ten, that "[t]he inventory was not unreasonable in scope." 428 U.S. at 376 n.10. The principle implicit in this footnote, that the scope of an inventory search is not unlimited, was addressed as well in the concurring and dissenting opinions. Justice Powell, in a concur-

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[6] The Court also noted the frequent need to determine whether a vehicle had been stolen and thereafter abandoned. 428 U.S. at 369. This interest does not apply to a station-house inventory of an arrestee's effects and is not presented on the facts or claimed by the state.

ring opinion, observed that the Court's holding provided no general license for the police to examine all the contents of automobiles, such as letters or checkbooks. 428 U.S. at 380 & n.7. Justice Marshall, in a dissenting opinion, agreed with Justice Powell's observation and noted that the Court's opinion did not authorize the search of containers which could be sealed, removed and secured without further intrusion. 428 U.S. at 388 n.6. Consistent with these statements, a majority of courts which have addressed the question have concluded that an inventory search of luggage and other removable containers in a vehicle is unreasonable in scope.[7]

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[7] *United States* v. *Bloomfield*, 594 F.2d 1200 (8th Cir. 1979); *United States* v. *Hill*, 458 F. Supp. 31, 33-37 (D.D.C. 1978); *State* v. *Prober*, 98 Wis. 2d 345, 297 N.W.2d 1, 7 (1980); *United States* v. *Vallieres*, 443 F. Supp. 186, 191 (D. Conn. 1977); *State* v. *Pace*, 171 N.J. Super. 240, 408 A.2d 808, 813 (1979); *State* v. *Houser*, 95 Wash. 2d 143, 622 P.2d 1218, 1226-28 (1980); *State* v. *Downes*, 285 Or. 369, 591 P.2d 1352 (1979); *State* v. *Bramlett*, 94 N.M. 263, 609 P.2d 345, 347-48 (Ct. App. 1980); *Obermeyer* v. *State*, 97 Nev. 158, 625 P.2d 95, 96-97 (1981); *Manalansan* v. *State*, 48 Md. App. 667, 415 A.2d 308 (1980); *Smith* v. *State*, 48 Md. App. 425, 427 A.2d 1064, 1065 (1981); *People* v. *Grana*, 185 Colo. 126, 527 P.2d 543, 545 (1974); *State* v. *Keller*, 265 Or. 622, 510 P.2d 568, 570 (1973); *State* v. *McDougal*, 68 Wis. 2d 339, 228 N.W.2d 671, 678 (1975); *State* v. *Gwinn*, 301 A.2d 291, 294 (Del. 1972); *People* v. *Counterman*, 192 Colo. 152, 556 P.2d 481, 485 (1976); *People* v. *Miller*, 110 Mich. App. 270, 312 N.W.2d 225, 228 (1981); *State* v. *Roth*, 305 N.W.2d 501 (Iowa 1981), *cert. denied*, ___ U.S. ___, 70 L.Ed. 2d 174 (1981); *People* v. *Bayles*, 82 Ill. 2d 128, 411 N.E.2d 1346, 1352 (1980), *cert. denied*, 453 U.S. 923 (1981); *State* v. *Morgan*, 3 Kan. App. 2d 667, 671, 600 P.2d 155, 159 (1979); *State* v. *Potter*, ___ Kan. App. 2d ___, 648 P.2d 1162, 1165 (1982); *People* v. *Salter*, 91 Ill. App. 3d 831, 414 N.E.2d 1252, 1255 (1980); *State* v. *Daniel*, 589 P.2d 408, 417 (Alas. 1979). See Amicus Brief by California Public Defender at 20, where it is explained that a majority of the Court in *Opperman* shared the view that there are limits on the scope of automobile inventory searches. *See also United States* v. *Bosby*, 675 F.2d 1174, 1179-80 (11th Cir. 1982); *State* v. *Rome*, 354 So. 2d 504 (La. 1978).

Opperman thus does not authorize the search of contents of repositories such as shoulder bags. Nor has it been read to provide such authorization.

B. *Opperman's* Holding That An Inventory Search Of An Automobile Was Reasonable Should Not Be Extended To Validate A Station-House Inventory Of The Contents Of A Shoulder Bag.

Numerous courts which have considered a station-house search of the contents of an arrestee's repositories of personal effects have found it to be beyond the scope of a permissible inventory.[8] These courts find that there is virtually no need to search the contents of the containers since they can simply be sealed, secured and inventoried as a unit. This caretaking procedure is found to be workable and reasonable by these courts.

The state, nevertheless, urges this Court to extend *Opperman's* holding to station-house inventory searches of the contents of luggage and other repositories. The various interests that are advocated by the state as grounds for conducting an inventory search of the contents of a repository for personal effects such as shoulder bag are (1) protection of the owner's property while it remains in police custody; (2) protection of the police against claims or disputes over lost or stolen prop-

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[8] *United States* v. *Monclavo-Cruz*, 662 F.2d 1285, 1288-90 (9th Cir. 1981); *United States* v. *Schleis*, 582 F.2d 1166, 1172-73 (8th Cir. 1978); *United States* v. *Cooper*, 428 F. Supp. 652, 654-55 (S.D. Ohio), *aff'd*, 564 F.2d 100 (6th Cir. 1977); *United States* v. *Davis*, 501 F. Supp. 23, 26 (N.D. Ga. 1980), *aff'd*, 647 F.2d 1119 (5th Cir. 1981); *State* v. *Kaluna*, 55 Haw. 361, 520 P.2d 51, 60-62 (1974); *Reeves* v. *State*, 599 P.2d 727, 735-36 (Alas. 1979); *Bradford* v. *State*, ___ Ind. App. ___, 401 N.E.2d 77, 80 (1980); *People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033, 1034-35 (1981); *Hicks* v. *State*, 398 So. 2d 1008, 1010 (Dist. Ct. App. Fla. 1981). *See also United States* v. *Mills*, 472 F.2d 1231, 1240-41 (D.C. Cir. 1972); *People* v. *Hamilton*, 74 Ill. 2d 457, 386 N.E.2d 53 (1979).

erty; (3) the need to maintain jail security and prevent harm to the police; and (4) the need to ascertain or verify the identity of the person arrested (Brief for Petitioner at 7, 24-25).

There is virtually no need, however, for the police to search inside a shoulder bag in order to advance these interests. Sealing, securing and inventorying the bag as a unit achieves the first three interests and the fourth interest—the need to verify identity—in most cases will be advanced by simply asking the arrestee to produce identification.

1. Sealing, securing and inventorying a shoulder bag as a unit safeguards the property, protects the police from false claims, and maintains jail security.

The interests generally recognized to justify an inventory—protection of the owner's property, protection against claims of lost or stolen property, and maintenance of jail security to prevent escape and harm—are served by sealing, securing and inventorying the property as a unit. In the first place, sealing, securing and inventorying a container as a unit, without inventorying its contents, safeguards the police from claims or disputes over lost or stolen property. The police are actually less likely to be accused of theft or loss of the contents if the container "has never been opened and its contents have never been removed, reshuffled and replaced." *United States* v. *Bloomfield*, 594 F.2d 1200, 1202 (8th Cir. 1979). As Professor LaFave has noted:

> "False claims cannot be avoided and seem more likely when the contents are handled and inventoried (a time when, the owner might later claim, some of his property was taken), as compared to when the container is immediately sealed." 2 W. LaFave, *Search and Seizure* § 5.5, at 360 n.50 (1978). *See Opperman*, 428 U.S. at 378-79 (Powell, J., concurring); 428 U.S. at 391 (Marshall, J., dissenting).

Moreover, since the inventory of an arrestee's effects is generally conducted in his presence at the station house, the police can obtain his signature acknowledging the correctness of the inventory. *Reeves* v. *State*, 599 P. 2d 727, 736-37 (Alas.

1979). It has even been suggested that the police might require the arrestee to sign a waiver releasing them of responsibility for the contents of unopened items. *State* v. *Kaluna*, 55 Haw. 361, 520 P.2d 51, 61-62 (1974); *See United States* v. *Robinson*, 414 U.S. 218, 258 n.7 (1973) (Marshall, J., dissenting).

Furthermore, safeguarding property as a unit places no burden on the police. In the first place, the police already perform similar functions, such as that associated with the caretaking of evidence. Secondly, simply listing "one shoulder bag" on an inventory sheet is less burdensome than listing the bag as well as its contents. *See United States* v. *Hill*, 458 F. Supp. 31, 37 (D.D.C. 1978).

A majority of the courts addressing this question thus recognize, as did the appellate court in this case, that securing containers of personal effects as a unit is better than inventorying the contents of the container.[9] Indeed, as the appellate court in this case found, there was no need to search inside Lafayette's shoulder bag because there were both inventory bags, in which to seal it, and lockers, in which to secure it (J.A. 15).[10]

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[9] *See, e.g., United States* v. *Monclavo-Cruz*, 662 F.2d 1285, 1289 (9th Cir. 1981); *State* v. *Gwinn*, 301 A.2d 291, 294 (Del. 1972); *People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033, 1035 (1981); *State* v. *McDougal*, 68 Wis. 2d 399, 228 N.W.2d 671, 678 (1975). *See* cases cited in nn. 7 & 8. *See also* 2. W. LaFave, *Search and Seizure* § 7.4, at 571-72 (1978); Comment, 1968 U. Ill. L. F. 401, 407-08 and additional cases cited in Amicus Brief by California Public Defender at 26-27.

[10] The Government in its amicus brief cites *Cady* v. *Dombrowski*, 413 U.S. 433 (1973), and *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976), and argues that the reasonableness of an inventory does not depend on whether the police interests in making the intrusion can be accomplished by less intrusive means, such as securing the repository as a unit (Brief for Government at 25). A careful reading of the cited cases shows that the Court was referring to less intrusive means which were unreasonable by virtue of their prohibitiv cost or the heavy burden they would involve. This is the precise point

Denying access to an arrestee's effects also safeguards the property, maintains jail security and prevents harm. Given the nature of a police station, there is no danger that objects will be obtained from a secured property room or locker and used to attempt an escape or cause harm to the police. Nor is there any risk that vandals might obtain a weapon or steal or damage the arrestee's effects. *See United States* v. *Cooper*, 428 F. Supp. 652, 654 (S.D. Ohio 1977); 2 W. LaFave, *Search and Seizure* § 5.5, at 360 n.50 (1978). *Cf.* 2 W. LaFave, *Search and Seizure* § 7.4, at 572 (1978) (risk of danger in automobile context questioned). This situation thus provides a sharp contrast to that in *Opperman*, where inventory searches of automobiles were considered to be "essential to respond to incidents of theft and vandalism." 428 U.S. at 369.

Moreover, protecting the police from potential booby-traps and explosives would be better accomplished by securing the container as a unit. As one court has noted, it would be foolhardy to blindly and routinely search every container for explosives and booby-traps. *United States* v. *Cooper*, 428 F. Supp. 652, 655 (S.D. Ohio 1977). *See* 2 W. LaFave, *Search and Seizure* § 5.5, at 360 n.50 (1978).

This is not to say that all repositories being inventoried may never by searched to check for explosive devices. If the police have reason to believe that a certain repository contains some immediately dangerous instrumentality, then it should be searched in a professional manner. *United States* v. *Chadwick*, 433 U.S. 1, 15 n.9 (1977).

This case, however, does not contain any exigent circumstances. Lafayette was arrested at the local Town Cinema for disturbing the peace. The arresting officer was not in any fear

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recognized in *Opperman*, i.e., that the less intrusive alternative of posting a security guard at the car-impound lot would be prohibitively expensive. 428 U.S. at 379 (Powell, J., concurring). "No comparable burdens are likely to exist with respect to the seizure of personal luggage." *Arkansas* v. *Sanders*, 442 U.S. at 765 n.14.

of his safety and did not find it necessary to conduct a pat-down search of Lafayette or his shoulder bag (J.A. 9, 14-15). At the station, Mietzner took possession of the bag and patted it from the outside. Feeling that something was inside, he searched the contents (J.A. 12, 14). He did not expect to find drugs or a gun inside, but conducted the search out of curiosity and because "everything" had to be inventoried (J.A. 14-15). The facts thus militate against any suggestion that the shoulder bag contained some immediately dangerous instrumentality.[11]

Accordingly, a search inside the shoulder bag was not needed to safeguard the property, protect the police from false claims, or maintain jail security since the officer could have simply inventoried the bag as a unit, sealed it in a bag, and secured it in a locker.

2. The need to verify the identity of an arrestee can be accomplished in most cases by simply making a request for identification papers and, in any event, is not presented on the facts of this case.

In most cases it simply is not necessary to search the contents of an arrestee's repositories for personal effects in order to ascertain or verify his identity. If the police do not personally know the arrestee, they can ask him for identification, such as a driver's license. Certainly it would be unreasonable for the police to search all of an arrestee's personal effects, posses-

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[11] The state cites *United States* v. *Robinson*, 414 U.S. 218 (1973), and argues that this Court should ignore the facts which show that there was no danger in this case. *Robinson*, however, has no application here. In *Robinson*, the Court upheld a search of a person at the time of his lawful arrest without requiring any assessment of whether there was cause to search for weapons or evidence because the determination to search was "necessarily a quick ad hoc judgment." 414 U.S. at 235. In conducting an inventory search at the station house, however, the police are not presented with a criminal context or the dangers which exist at the time of arrest. Nor are the police required to make quick judgments.

sions and papers, in order to verify identity, without first asking the arrestee to produce some identification. A rule allowing a search to verify identity could easily be abused and serve as a pretext for a general search. *See State* v. *Frazier*, 318 N.W.2d 42, 44 n.1. (Minn. 1982); 3 W. LaFave *Search and Seizure* § 9.4(g) (1982 Supp.). Of course, a fingerprint check, perhaps the best method to verify identify, is available to the police in situations where they are doubtful of the arrestee's true identity.

In any event, this case does not present this question. The state has never advanced this need nor does the record support a claim that the search was based upon the need to identify Ralph Lafayette as the person arrested. Accordingly, this potential interest is irrelevant in this case. *See State* v. *Prober*, 98 Wis. 2d 345, 297 N.W.2d 1, 11 (1980). Indeed the officer might have known Lafayette personally or might have asked for and received identification papers, such as an Illinois driver's license, which bears a photograph.[12]

3. Other considerations in this case, including the absence of consent to search, militate against upholding the station-house inventory.

Additional factors in this case support a finding of unreasonableness. For example, the inventory was conducted without Lafayette's consent and he was not advised of the purpose of the inventory (J.A. 7-8). Moreover, he apparently was not given an opportunity to make other arrangements for the safekeeping of his belongings or informed of his right to post a cash bond to obtain his release. Furthermore, since

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[12] The Government suggests that "the permissibility of conducting a routine inventory should not turn on . . . the facts of a particular case" (Brief for Government at 23-24). This position ignores the test applied in *Opperman*, 428 U.S. at 375. Evidently, the Government advocates such an approach, which would have this Court ignore the facts of this case, because it cannot argue that the search was reasonable, given those facts.

Lafayette was arrested for a petty offense, the police would very likely have retained custody of his belongings for only a short period of time until he was able to post a bond.[13] *See United States* v. *Davis*, 501 F. Supp. 23, 26 (N.D. Ga. 1980), *aff'd*, 647 F.2d 1119 (5th Cir. 1981).

All of these factors show the search was unreasonable. Certainly, it would have been consistent with Fourth Amendment principles to seek Lafayette's consent, advise him of his right to post bond, and provide him an opportunity to have someone retrieve his belongings. Lower courts recognize that these factors merit great weight and find inventory searches to be unreasonable where the arrestee was not asked for consent or given an opportunity to post bail or to make other arrangements for the caretaking of his belongings.[14]

One final matter merits attention. The state argues that the evidence should not be suppressed because, according to the

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[13] Lafayette was arrested for disturbing the peace, a petty offense and an ordinance violation (J.A.8-9, 13, 21). Under Illinois law he could have obtained his release by posting a $50.00 cash bail. *See* Ill. Rev. Stat. ch. 110A, § 528(a) (1979).

In the amicus brief filed by Americans for Effective Law Enforcement on behalf of the state, the amicus reproduces a property index card which purportedly was signed by Lafayette. Although this card is not part of the record, it is interesting to note that it indicates Lafayette had $79.00 and thus could have posted bail. See Brief by Americans for Effective Law Enforcement at 10.

[14] *See, e.g., Zehrung* v. *State*, 569 P.2d 189, 193 (Alas. 1977), *modified*, 573 P.2d 858 (1978); *United States* v. *Mills*, 472 F.2d 1231 (D.C. Cir. 1972); *United States* v. *Wilson*, 636 F.2d 1161, 1165 (8th Cir. 1980); *State* v. *Killcrease*, 379 So. 2d 737 (La. 1980); *State* v. *Hatfield*, 364 So. 2d 578 (La. 1978); *State* v. *Schmidt*, 359 So. 2d 133 (La. 1978); *State* v. *Mangold*, 82 N.J. 575, 414 A.2d 1312 (1980); *Gaston* v. *State*, 155 Ga. App. 337, 270 S.E.2d 877 (1980); *State* v. *Southwell*, 369 So. 2d 371 (Dist. Ct. App. Fla. 1979). *See also*, 2 W. LaFave, *Search and Seizure* § 7.4, at 571 (1978) ("[T]here is much to be said in favor of the proposition that the police should [conduct an]

state, the police maintained a good-faith belief that they acted reasonably in searching inside the bag (Brief for Petitioner at 25-26).

Lafayette's response is twofold. In the first place, the state has waived this contention by never raising it before. *See Cardinale* v. *Louisiana*, 394 U.S. 437 (1969), and part II of this brief. Secondly, the Kankakee Police Department policy that "everything [must] be inventoried" (J.A. 15) conflicts with Illinois law as it existed at the time the inventory was conducted in this case, September 1, 1980 (J.A. 7). Since 1979 it has been clear that repositories of personal effects should be inventoried as units without searching their contents. *People* v. *Hamilton*, 74 Ill. 2d 457, 386 N.E.2d 53 (1979); *People* v. *Bayles*, 76 Ill. App. 3d 843, 395 N.E.2d 663 (1979), *aff'd*, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), *cert. denied*, 453 U.S. 923 (1981). Given the status of Illinois law, the state's suggestion of good faith is puzzling.

In sum, the state's position that *Opperman's* holding should extend to this case should be rejected. As Lafayette has shown, he had a high privacy interest in the contents of his bag. Moreover, in contrast to the essential need to conduct automobile inventories, the police had no need to search inside his bag in order to achieve inventory objectives. The state's posi-

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inventory . . . when the owner . . . is at hand only if he elects that alternative.")

The need for the owner's consent was advocated by the dissent in *Opperman*, but rejected in the opinion of the Court since the lack of consent apparently would not protect the police from claims of lost or stolen property or protect the public from vandals who might obtain a firearm. 428 U.S. at 376 n.10. This reasoning would not apply to an inventory search of an arrestee's shoulder bag conducted at the police station in his presence and without his consent. Unlike automobiles, the bag can be secured within the confines of the station and protected from theft, loss and vandals. The consent theory advanced by the dissent in *Opperman* thus merits renewed consideration.

tion ignores the fundamental distinctions that exist between these two types of inventories. Its argument that *Opperman's* holding should extend to this case because the station-house search was an "inventory" conducted pursuant to "routine procedure" essentially amounts to an indiscriminate use of labels to avoid a serious constitutional question. Justice Cardozo described this use of labels as follows:

> "A fertile source of perversion in constitutional theory is the tyranny of labels . . . [A] court frames a rule which is general in form, though it has been wrought under the pressure of particular situations. Forthwith another situation is placed under the rule because it is fitted to the words, though related faintly, if at all, to the reasons that brought the rule into existence." *Snyder* v. *Massachusetts*, 291 U.S. 97, 114 (1933).

Because Lafayette's privacy interest outweighed the need for the intrusion, the search was unreasonable. Consequently, the judgment of the appellate court should be affirmed.

II. REVIEW OF THE SEARCH AS INCIDENT TO THE ARREST SHOULD BE PRECLUDED SINCE THE LOWER COURT BASED ITS DECISION ON AN ADEQUATE STATE GROUND.

As an alternative argument, the state contends that, even if the search of Lafayette's shoulder bag was not a valid inventory search, it nevertheless was justified as a delayed search incident to his arrest. This additional question should not be reached since it was rejected by Illinois courts on an adequate and independent state ground, i.e., the Illinois rule that an issue is waived if not raised in a timely fashion.

From its foundation this Court has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. *Murdock* v. *City of Memphis*, 20 Wall. 590, 636 (1875); *Fox Film Corp.* v. *Muller*, 296 U.S. 207 (1935). In *Herb* v. *Pitcairn*, 324 U.S. 117, 126 (1945), the Court, recognizing the limitations on its jurisdiction

resulting from the partitioning of power between the state and federal judicial systems, explained:

> [O]ur power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion.

Furthermore, this Court has consistenly found state procedural rules, including waiver rules, to provide an adequate and independent basis for a judgment, so long as enforcement of the rule serves a legitimate state interest [*Henry* v. *Mississippi*, 379 U.S. 443, 447 (1965)], or at least is not arbitrary or a mere device to prevent review of the federal question [*McCoy* v. *Shaw*, 277 U.S. 302 (1928)].

The appellate court opinion demonstrates that the sole basis for its rejection of the search-incident-to-arrest theory was waiver: "[W]e find the State has waived this argument for the purposes of appeal by failing to raise it at the suppression hearing" (J.A. 27). After this direct statement of its holding, the court went on to express its opinion that the search-incident theory did not apply, prefacing its discussion with the statement: "Moreover, even assuming, *arguendo*, that the State has not waived this argument, the . . . search . . . did not constitute a valid search incident to a lawful arrest" (J.A. 27). Thus, the discussion of the federal question was merely dicta. Indeed, the state concedes this point in its brief, admitting that the appellate court, after it "*held*" the argument waived, merely "*noted* . . . that even if the argument was raised, the search violated the fourth amendment" (Brief for Petitioner at 5) (emphasis added). See also Petition for Cert. at 4.

The state contends that the appellate court, while finding waiver, nevertheless went on to "discuss" the question of search incident to arrest (Brief for Petitioner at 13). However, as the cases relied upon by the state make clear, the mere discussion of a federal question does not warrant review by this Court. *Jenkins* v. *Georgia*, 418 U.S. 153 (1974); *Raley* v. *Ohio*,

360 U.S. 423 (1959). Only where the state court has reached and decided the question is review permitted.

It is significant that the state does not contend that application of the Illinois waiver rule does not serve a legitimate state interest. *See Michigan* v. *Tyler*, 436 U.S. 499, 512 n.7 (1978). Indeed two state interests are apparent in this case. Because the state failed to advance its claim in a timely fashion, the record is insufficient for a proper determination of the federal question. As the Court recognized in *Cardinale* v. *Louisiana*, 394 U.S. 437, 439 (1969), "Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind."[15]

A second legitimate interest in enforcement of the rule lies in the fact that the state's untimely raising of the issue precluded the defendent from advancing, and the trial court from considering, an adequate and independent ground based on Illinois substantive law. As this Court has consistenly recognized, states are free to impose greater restrictions under their own law on police activity than those required under the federal constitution. *Oregon* v. *Hass*, 420 U.S. 714 (1975). In Illinois a search incident to arrest is justified only when conducted for any of four purposes specifically enumerated by statute: protection of police from attack, prevention of escape, discovery of fruits of the crime, or discovery of evidence or an instrumentality of a crime. Ill. Rev. Stat. ch. 38, § 108-1 (1979); *People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033, 1034 (1981). Because the record indicates that none of the four purposes

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[15] For example, while the state claims that the bag was not in Mietzner's exclusive control immediately prior to the search (Brief for Petitioner at 15, 19-20), the record does not reveal the exact circumstances at that time, such as the distance between Lafayette and the bag and the number of officers who were present. Similarly, although the Government alleges that the bag was not like luggage (Brief for Government at 15-18), the record is silent as to its exact size, shape or construction. See III-C *infra*.

were served by the search of Lafayette's shoulder bag, the search violated Illinois law. Yet, since the state did not raise the issue at the hearing, Lafayette was precluded from advancing this argument or even adducing evidence on this point. Thus, this is the type of situation, described in *Cardinale* v. *Louisiana*, 394 U.S. at 439, in which the failure to raise an issue in a timely manner in the trial court has precluded consideration of an adequate state ground.

Another justification for finding the waiver holding to be an adequate state ground lies in the fact that the state contested neither Lafayette's waiver argument nor the appellate court's waiver ruling in Illinois courts. The state raised the issue in its original brief in the appellate court. At that time no explanation was provided for the failure to present the issue at the suppression hearing. Although Lafayette, in his brief, argued that the issue had been waived, the state did not respond, filing no reply brief and presenting no oral argument to the appellate court. Under Illinois law, the state may be deemed to have admitted the validity of the defense argument by failing to make a response. *People ex rel. Andrew* v. *Chicago, M. & St. P. R.R.*, 324 Ill. 43, 154 N.E. 472, 473 (1926); *City of West Chicago* v. *Clark*, 58 Ill. App. 3d 847, 374 N.E.2d 1277, 1282 (1978); Ill. Rev. Stat. ch. 110A, § 341(e)(7) (1979).

Furthermore, the state did not challenge the appellate court's finding of waiver in Illinois courts. No petition for rehearing was filed with the appellate court nor was the point included in the state's petition for leave to appeal to the Illinois Supreme Court. In fact, the state has addressed the issue of waiver for the first time in its brief in this Court. In concluding that no federal question was presented in *Cincinnati, N.O. & T.P. Ry.* v. *Slade*, 216 U.S. 78 (1910), the Court found it significant that the plaintiff in error never challenged the nonfederal ground relied upon the court below. Since the state in the instant case has also neglected to seek review of the state ground upon which the decision was based, this Court should decline to consider the federal question argued by the state.

The state suggests in its brief that the issue was, in fact, raised at the hearing. However, the sole justification advanced by the state at the suppression hearing was that it was a proper inventory search (J.A. 17-18). The only case cited by either side was *People* v. *Bayles*, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), *cert. denied*, 453 U.S. 923 (1981), a case dealing exclusively with the propriety of an inventory search. Indeed all comments of the court and counsel related to this point. In claiming the issue was raised, the state points to its statement that "[t]he question is is there a constitutional bar to looking into that bag" (J.A. 18). However, this very general statement of the issue hardly alerted either Lafayette or the trial court that the state was seeking to justify the search as incident to the arrest.

The state also contends that the issue was raised in its trial court brief in opposition to the suppression motion. However, the state's brief was not filed until 20 days after the hearing, thereby denying Lafayette the opportunity to adduce evidence relating to this issue or to advance alternative state grounds.[16]

Consequently, when the state on appeal sought to justify the search as incident to the arrest, the appellate court properly invoked the long-standing Illinois rule that points not presented to the trial court in a timely manner cannot be considered on appeal (J.A. 27, *citing People* v. *Fuentes*, 91 Ill. App. 3d 71, 414 N.E.2d 876 (1980)). *See People* v. *Holloway*, 86

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[16] The state has mistakenly placed great reliance on *Steagald* v. *United States*, 451 U.S. 204 (1981), a case involving a federal procedural default rule. The discussion of waiver in *Steagald* is not binding on Illinois, which is free to adopt its own procedural rules. *Wolfe* v. *North Carolina*, 364 U.S. 177 (1960). Even were the reasoning of *Steagald* to be applied here, it would preclude review of the federal question since the question was not raised "in a timely fashion during the litigation." 451 U.S. at 209. *People* v. *Keller*, No. 55745, Sup. Ct. Ill. (Nov. 18, 1982), also relied upon by the state, is inapposite because, unlike the instant case, it involved an issue raised for the first time on appeal by the party which prevailed below.

Ill. 2d 78, 426 N.E.2d 871 (1981). Therefore, because the court below rejected the search-incident-to-arrest theory on this adequate state procedural ground, which served legitimate state interests, Lafayette urges this Court to decline to review the search as one incident to arrest.

III. THE STATION-HOUSE SEARCH OF LAFAYETTE'S SHOULDER BAG, IN WHICH HE HAD A HIGH EXPECTATION OF PRIVACY INDEPENDENT OF THAT IN HIS BODY AND CLOTHING, CANNOT BE UPHELD AS A DELAYED SEARCH INCIDENT TO THE ARREST.

Even if this Honorable Court does not defer to the appellate court's waiver holding (See Issue II), it should not consider whether the search was incident to the arrest because "the record fails to support the theory now advanced." *Jones* v. *United States*, 357 U.S. 493, 500 (1958) (Court declined to consider contention that search was incident to arrest where purpose of entry to home was to search for evidence seized and not to arrest). As Officer Mietzner testified, he examined the contents of the shoulder bag, which was under his control, out of curiosity and because "everything [had] to be inventoried" (J.A. 15). Moreover, immediately before searching the contents of the bag, he patted the outside of the bag and did not believe it to contain a gun or drugs (J.A. 12, 14-15). Since the record reveals the search was conducted as part of an inventory, the search-incident-to-arrest theory should not be reached.

Assuming, arguendo, that the question is properly before this Court, the search, in any event, was unreasonable and beyond the scope of the search-incident-to-arrest exception to the warrant requirement.

A. The Search Was Unreasonable And Beyond The Scope Of The Search-Incident-To-Arrest Exception Because It Was Remote In Time And Place From The Arrest And Was Conducted In The Absence Of Any Exigency Or Probable Cause.

As a general rule "a search of private property must be both reasonable and pursuant to a properly issued search warrant" to comply with the Fourth Amendment. *Arkansas* v. *Sanders*, 442 U.S. 753, 758 (1979). Thus a search may be invalidated solely because a warrant was not obtained or because it was unreasonable in light of all the surrounding circumstances. *See Cady* v. *Dombrowski*, 413 U.S. 433, 442 (1973).

1. A warrant was required.

The exceptions to the warrant requirement are few and have been "jealously and carefully drawn" [*Jones* v. *United States*, 357 U.S. 493, 499 (1958)] to reach "that which is necessary to accommodate the identified needs of society." *Sanders*, 442 U.S. at 760. Moreover, because each exception "invariably impinges to some extent on the protective purpose of the Fourth Amendment," the burden is on the party seeking the exemption to show the need for it. *Sanders*, 442 U.S. at 759-60. *See United States* v. *Jeffers*, 342 U.S. 48, 51 (1951), and *Mincey* v. *Arizona*, 437 U.S. 385 (1978).

A lawful arrest creates a situation which permits a warrantless, contemporaneous search of the person and the area within his immediate control. Such searches are considered valid because of the need to remove weapons, which might be used for resisting arrest or effecting an escape during transport to the station, and the need to prevent the concealment or destruction of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); *New York* v. *Belton*, 453 U.S. 454, 457 (1981).

This Court has recognized, however, that the scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible. Thus in *Chimel*, the Court narrowed the spatial scope of the search from that which had been recognized in prior decisions to the

area from within which an arrestee might gain possession of a weapon or destructible evidence. No comparable justification was found for searching beyond this area. 395 U.S. at 763. *See Terry* v. *Ohio*, 392 U.S. 1 (1968); *Belton*, 453 U.S. at 457; *Mincey*, 437 U.S. at 393.

Similarly, this Court has placed temporal limitations on the scope of this exception by holding that the search must be contemporaneous with the arrest. No comparable justification for allowing a search remote in time or place from the arrest has been found to exist. *See, e.g., Preston* v. *United States*, 376 U.S. 364 (1964); *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968).[17] With respect to searches of automobiles, for example, this Court has held that the passenger compartment may be searched as a "contemporaneous incident" of an arrest on a public highway (*Belton*, 453 U.S. at 460); however, an automobile may not be searched as an incident to the arrest once the car has been taken to another place and the accused is in custody. (*Preston*, 376 U.S. at 367; *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. at 220-21). As noted by Justice White in *Chambers* v. *Maroney*, 399 U.S. 42, 47 (1970), "the reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house."[18]

This Court's opinions in *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Arkansas* v. *Sanders*, 442 U.S. 753 (1979), reaffirmed these temporal limitations and also recognized that an arrested person retains a high privacy interest in the contents of his repositories of personal effects. In *Chadwick*, the

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[17] *See also Agnello* v. *United States*, 269 U.S. 20 (1925); *Stoner* v. *California*, 376 U.S. 483, 486 (1964); *Shipley* v. *California*, 395 U.S. 818 (1969).

[18] In *Chambers* the Court upheld a search, which was remote in time and place from the arrest and based on probable cause, under the "automobile exception". In contrast, a shoulder bag in custody in the station is involved here and there was no probable cause to search it.

Court held that, in the absence of any exigency, a warrant was required to search the contents of luggage, which had been seized at the time of arrest, even though there was probable cause to search it for contraband. The Court emphasized the high expectation of privacy in the contents of personal luggage and rejected the Government's contention that that expectation of privacy was lost by virtue of the arrest. 433 U.S. at 16 n.10. The Court thus concluded that "warantless searches of luggage or other property seized at the time of arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' . . . or no exigency exists." 433 U.S. at 15, *quoting Preston*, 376 U.S. at 367 (citation omitted).

Similarly, in *Sanders*, the Court held that, in the absence of any exigency, the police could not conduct a warrantless search of a suitcase following its removal from a taxi. The Court noted that, where the police, "without endangering themselves or risking loss of the evidence, lawfully have detained one suspected of criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained." 442 U.S. at 766.[19] In a concurring opinion, Chief Justice Burger, the author of *Chadwick*, summarized his earlier opinion as follows:

> "[The] essence of our holding in Chadwick is that there is a legitimate expectation of privacy in the contents of a trunk or suitcase accompanying or being carried by a person; that expectation of privacy is not diminished simply because the owner's arrest occurs in a public place. Whether arrested in a hotel lobby, an airport, a railroad terminal, or on a public street, as here, the owner has the right to

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[19] This Court has since rejected some of the reasoning in *Arkansas* v. *Sanders*, but not its holding, which still applies to luggage in an automobile where there is probable cause to search the luggage but not the automobile, i.e., where the relationship between the automobile and luggage is purely coincidental. *United States* v. *Ross*, ___ U.S. ___, 72 L.Ed.2d 572, 593 (1982).

> expect that the contents of his luggage will not, without his consent, be exposed on demand of the police." 442 U.S. at 766-67.

In the instant case the search of Lafayette's shoulder bag was subject to the warrant requirement since it was a repository for personal private effects. *Sanders*, 442 U.S. at 762 n.9. Moreover, Lafayette had a legitimate expectation of privacy in the contents of his bag, which was not reduced simply because he was carrying it when he was arrested in a public place. *Chadwick*, 433 U.S. at 16 n.10; *Sanders*," 442 U.S. at 766-67 (Burger, C.J., concurring).

Although a warrantless search of the bag might have been permissible at the time of the arrest under the Fourth Amendment,[20] the search here was not conducted until the bag was taken from Lafayette at the station and was "securely in the control of the police." *Sanders*, 442 U.S. at 767. As the state concedes, the search took place after it was determined that Lafayette would be taken to a jail cell and after he was ordered to remove his clothing (J.A. 14, 16; Brief for Petitioner at 3-4, 17). The search thus was conducted as part of a routine caretaking procedure since the police were going to store and safeguard the bag while Lafayette was in a cell. (See Issue I)

Since the search was remote in time and place from the arrest and no exigency existed, the search failed to comply

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[20] Assuming the bag was not inaccessible to Lafayette, a contemporaneous search would appear to have been proper under the Fourth Amendment. *See, e.g., Draper* v. *United States*, 358 U.S. 307 (1959). However, a contemporaneous search may not have been permissible under Illinois law because there was no evidence for which to search and the officer had no fear for his safety. *See People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981); Ill. Rev. Stat. ch. 38, § 108-1 (1979). In any event, it is without question that the delayed search violated Illinois law. *People* v. *Helm*. See argument II of this brief.

with the warrant requirement and was unreasonable. *Chadwick*, 433 U.S. at 15.[21]

The state contends this case is different from *Chadwick* and *Sanders* because, according to the state, Lafayette "continued wearing the purse until the time of the search when he placed it on the counter in front of the officer who performed the search" (Brief for Petitioner at 19). This argument should be rejected because it is based upon controverted testimony which cannot be asserted as fact.

Although Officer Mietzner testified that Lafayette placed his shoulder bag on the counter, Lafayette testified that one officer grabbed him and another took the bag from him and threw it on the counter (J.A. 10). No finding of fact was made regarding this conflicting testimony by the trial court. However, on appeal, the court found that Lafayette "had been secured" and that "the shoulder bag was in the officer's exclusive possession" (J.A. 28). These findings are supported by Lafayette's testimony, which, under Illinois law, the court below viewed favorably.[22] *People* v. *Holloway*, 86 Ill. 2d 78, 426 N.E.2d 871 (1981).

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[21] Although Lafayette maintains that the search was both (1) remote in time and place from the arrest and (2) not justified by any exigency, the rule from *Chadwick* is that either one of these facts standing alone would trigger the warrant requirement. 433 U.S. at 15.

[22] Where a trial judge makes no express findings, a reviewing court in Illinois is bound to view the evidence based on the testimony most favorable to the prevailing party unless it is clearly unreasonable. *People* v. *Haskell*, 41 Ill. 2d 25, 241 N.E.2d 430 (1968). Illinois law also provides that the order allowing or denying a motion to suppress evidence illegally seized "shall state the findings of facts and conclusions of law upon which the order or judgment is based." Ill. Rev. Stat. ch. 38, § 114-12 (e) (1979). The state did not make a request for findings following the court's order which summarily allowed the motion. Accordingly, the state cannot complain now of the absence of findings or assume a finding in its favor.

Moreover, it would be unjust to reject these findings by the appellate court, particulary since the state's belated search-incident claim prevented the presentation of relevant evidence at the suppression hearing. (See Issue II) The true facts may actually be that Lafayette was fifty feet away from Mietzner, surrounded by police officers, and in the act of removing his pants when the contents of the bag were searched. Since the state had the burden to prove the exception upon which it relies, it should have developed facts to support that theory. *United States* v. *Jeffers*, 342 U.S. 48, 51 (1951).[23]

Accordingly, as in *Sanders*, the state here "has failed to carry its burden of demonstrating the need for [a] warrantless [search]." 442 U.S. at 763. The appellate court correctly found that the bag was in the officer's exclusive control and a warrant was required.[24]

2. The search was unreasonable.

Although this search should be invalidated solely because a warrant was not obtained, it is evident that the search was also unreasonable in light of all the surrounding circumstances. *Sanders*, 442 U.S. at 758; *Cady* v. *Dombrowski*, 413 U.S. at 442. Significantly, there was no probable cause to search and

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[23] Based upon its erroneous assertion of fact, the state argues that *Belton* applies to this case (Brief for Petitioner at 19). Actually the holding of *Belton* permits, as a "contemporaneous incident" of arrest, only a search of the passenger compartment of an automobile. 453 U.S. at 460. As the Court explicitly stated, this holding "[did] no more than determine the meaning of Chimel's principles in this particular and problematic context." 453 U.S. at 460 n.3. There is little or no danger that an arrestee will gain access to a container which has been removed from him inside a police station.

[24] It should be noted that in *Sanders* the risk that the respondent or his companion would gain access to the suitcase was actually greater than the risk here that Lafayette would gain access to his bag. In *Sanders* the search was conducted on the street; here it was at the station house.

the search was not conducted to serve any of the purposes of a search incident to arrest. Officer Mietzner had no reason to search the bag other than to inventory it. Furthermore, the bag was not searched to prevent Lafayette from obtaining a weapon or destroying evidence (J.A. 14-15). *See Chimel* v. *California*, 395 U.S. at 763.

These circumstances compel a finding of unreasonableness. As noted in *Chambers* v. *Maroney*, 399 U.S. 42, 51 (1970):

> In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution.

Similarly, the fact that no purpose for conducting a search incident to arrest was present merits weight. *See People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981); *People* v. *Bean*, 107 Ill. App. 3d 662, 437 N.E.2d 1295 (1982), *petition for cert. filed*, (No. 82-948).

It is recognized that in *United States* v. *Robinson*, 414 U.S. 218 (1973), the Court rejected a rule which would require litigation in each case of the issue of whether there was present one of the purposes supporting the authority for a search of the person incident to arrest. Similarly, it is recognized that in *Robinson* the Court permitted the search without probable cause.

The Court's rationale in making these findings was that a police officer's determination to search was "necessarily a quick ad hoc judgment." 414 U.S. at 235. In this case, however, there was no search made at the time of the arrest, but rather a routine station-house inventory procedure was followed. Given the factual context of this case, there is no reason to dispense with the probable cause requirement. Nor should the rationale which underlies a search incident to arrest be ignored. *See Preston* v. *United States*, 376 U.S. 364; *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. at 220.

As noted by Justice Frankfurter, the right to search incident to arrest must be analyzed within its factual context:

> "[T]he basis of any right to search as an incident to arrest [must be] put in proper focus. Photographs can be so taken as to make a midget look like a giant, and vice versa. The same kind of distortion results if a legal doctrine embedded in a larger matrix of principle is taken out of the matrix and elevated to an independent position. In plain English, the right to search incident to arrest is merely one of those very narrow exceptions to the 'guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case.'" *United States* v. *Rabinowitz*, 339 U.S. 56, 71-72 (1949) (dissenting opinion) (citations omitted).

Accordingly, this Court should find that the warrantless search was unreasonable and beyond the scope of one incident to arrest because it was remote in time and place from the arrest and no exigency or probable cause existed for the search. A finding by this Court that the search was unreasonable would be consistent with both the facts of this case and the decisions of this Court. Indeed since an automobile cannot be searched incident to arrest without probable cause where it has been driven from the place of arrest to the station house *(Dyke; Preston)*, it would be anomalous to find that a shoulder bag, in which there is a substantially greater expectation of privacy, can be searched inside the station. The search thus violated the warrant requirement as well as the reasonableness standard of the Fourth Amendment.[25]

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[25] Several courts have rejected the argument that the police can conduct a delayed search, as an incident to the arrest, of repositories of personal effects which were being carried or were within the arrestee's reach at the time of arrest. *See, e.g., United States* v. *Schleis*, 582 F.2d 1166 (8th Cir. 1978); *United States* v. *Rengifo-Castro*, 620 F.2d 230 (10th Cir. 1980); *United States* v. *Gooch*, 603 F.2d 122 (10th Cir. 1979); *United States* v. *Monclavo-Cruz*, 662 F.2d 1285 (9th Cir. 1981); *United States* v. *Calandrella*, 605 F.2d 236, 249

B. Contrary To The State's Contention, This Case Is Not Controlled By *Robinson* And *Edwards*.

The State argues that this case is distinct from *Chadwick* and *Sanders* and controlled by *United States* v. *Robinson*, 414 U.S. 218 (1973), and *United States* v. *Edwards*, 415 U.S. 800 (1974). According to the state, a lawful arrest authorizes a subsequent station-house search of the person and all containers which were within his possession at the time of arrest (Brief for Petitioner at 9-10, 14-15, 21).

Without explicitly stating so, the state asks this Court to reject the reasoning in *Chadwick* and *Sanders* to the effect that one's expectation of privacy in the contents of repositories of personal effects accompanying or being carried at the time of his arrest is not diminished by virtue of the arrest and is independent of the expectation of privacy in one's body and clothing. *Chadwick*, 433 U.S. at 15 & 16 n.10; *Sanders*, 442 U.S. at 766-67 (Burger, C.J., concurring). However, there is no need to reject the reasoning in *Chadwick* and *Sanders*. Nor is this case controlled by *Robinson* and *Edwards*.

Robinson recognized that the search-incident-to-arrest exception to the warrant requirement had historically been formulated into two distinct propositions: (1) the search of a person; and (2) the search of the area within the control of the

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(6th Cir.), *cert. denied, sub nom.*, *Kaye* v. *United States*, 444 U.S. 991 (1979); *United States* v. *Lace*, 502 F. Supp. 1021 (D. Vt. 1980), *aff'd*, 669 F.2d 46 (2d Cir. 1982); *United States* v. *Musick*, 534 F. Supp. 954, 962-63 (N.D. Cal. 1982); *Matter of B.K.C.*, 413 A.2d 894 (D.C. Ct. App. 1980); *United States* v. *Farrar*, 470 F. Supp. 128 (S.D. Miss. 1979); *People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981); *State* v. *Dudley*, 561 S.W.2d 403 (Mo. Ct. App. 1978); *State* v. *Stevens*, 26 Wis. 2d 451, 132 N.W.2d 502 (1965); *State* v. *Pender*, 66 Ohio Misc. 23, 419 N.E.2d 1141 (1980); *Bradford* v. *State*, ___ Ind. App. ___, 401 N.E.2d 77 (1980). *See also United States* v. *Corbin*, 494 F. Supp. 244 (M.D. N.C. 1980); *United States* v. *Jones*, 317 F. Supp. 856 (E.D. Tenn. 1970).

arrestee. 414 U.S. at 224. *Robinson* and *Edwards*, unlike this case, both involved situations falling within this first proposition. In *Robinson*, a contemporaneous full search of the person was allowed to disarm the person and discover evidence.[26] In *Edwards*, the seizure of clothing worn by an arrestee as evidence of a crime was upheld by the Court. The very distinction between the person and repositories of personal effects in his control is what the Court recognized in *Chadwick*, where both *Edwards* and *Robinson* are distinguished:

> "Unlike searches of the person, *United States* v. *Robinson*, 414 U.S. 218 (1973); *United States* v. *Edwards*, 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest." 433 U.S. at 16 n.10.

The state thus reads *Robinson* and *Edwards* too broadly and fails to recognize the distinction that exists between a search of the person and a search of a repository of personal effects, such as a shoulder bag.

The state also argues that *Edwards* supports a delayed search of repositories of personal effects incident to arrest. Lafayette recognizes that *Edwards* suggests that property which the accused decides to carry with him from the place of the arrest to the place of detention may be seized and searched. 415 U.S. at 803, *quoting Abel* v. *United States*, 362 U.S. 217 (1960). In *Edwards* the question, however, was actually whether the warrantless seizure[27] of clothing as evidence of a

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[26] Although a crumpled cigarette package was removed from the arrestee's pocket and searched, the Court did not engage in a "container" analysis. More importantly, however, the package was searched immediately. *Robinson* provides no support for a delayed search of a container.

[27] Although *Edwards* uses the word "search" in parts of its opinion, the discussion mostly refers to a "seizure." The questions, whether a visual inspection of outer clothing constitutes a search and whether a person has a legitimate expectation of privacy in the condition and

crime could be justified where the arrestee had been in custody for ten hours. In upholding the seizure, the Court noted that no suitable clothing had been available at the time Edwards was placed in jail. The Court further found that it was reasonable to seize and examine the clothing for paint chips, given the existence of probable cause linking the clothes to a crime and given the danger of destruction of the evidentiary value of the clothing. 415 U.S. at 805-06. The Court then explicitly limited its holding to the facts before it, noting that it was not holding that the warrant clause was never applicable to a post-arrest seizure of the effects of the arrestee. 415 U.S. at 808.

Edwards, unlike this case, thus involves the seizure of clothing of an arrestee where there was probable cause that it constituted evidence of a crime and where the seizure was necessary to prevent loss of the evidence.

Abel v. *United States* is also distinguishable from this case. In *Abel*, the petitioner, who was suspected of being a Russian spy, was arrested pursuant to a deportation arrest warrant. A fifteen-to-twenty-minute search was then conducted of his person and of all his belongings in his hotel room and the adjoining bathroom. Abel then chose the belongings which he wished to take with him, and immigration officers assisted him in packing his belongings. Subsequently, all of Abel's belongings were searched more thoroughly at Immigration headquarters. A birth certificate and other evidence of Abel's illegal status were discovered and seized at that time. 362 U.S. at 221-25. In upholding the validity of this later search, the Court noted that it had been conducted to secure evidence of his illegal status. Furthermore, the Court emphasized that the search had only involved a more thorough search of items Abel had decided to take with him. 362 U.S. at 238-39.

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appearance of his outer clothing which is exposed to public view, were not raised. The Court has since noted that an arrestee has little or no expectation of privacy in his person or clothing being worn. *See Bell* v. *Wolfish*, 441 U.S. 520 (1979).

Abel is thus different from the instant case because the search there started in the hotel room and was merely continued at the place of detention. Moreover, the search involved the belongings Abel chose to bring with him, and there was probable cause to search for evidence of his illegal status. *See State* v. *Brown*, 291 Or. 642, 634 P.2d 212, 218 n.8 (1981).

To the extent, however, that *Abel* suggests a warrantless search of luggage can be conducted at the station in the absence of any exigency, the decision is simply inconsistent with *Chadwick* and *Sanders*. Furthermore, some of the precedents and principles underlying the decision in *Abel* were subsequently overruled. Specifically, the *Abel* Court relied upon *Harris* v. *United States*, 331 U.S. 145 (1946), in finding that the fifteen-to-twenty-minute search at the hotel was proper. 362 U.S. at 238-39. *Harris* and its progeny were overruled, however, in *Chimel* v. *California*, 395 U.S. 752, 768 (1969). Accordingly, *Abel's* continuing validity is questionable. *See United States* v. *Hernandez-Rojas*, 470 F. Supp. 1212, 1221-22 (E.D. N.Y.), *aff'd*, 615 F.2d 135 (2d Cir. 1979).

Consequently, *Robinson*, *Edwards* and *Abel* should not be found to control this case.

C. Lafayette's Expectation Of Privacy In The Contents Of His Bag Was Not Reduced By Virtue Of The Arrest Under The Theory That The Bag Was Immediately Associated With His Person.

In its amicus brief, the Government argues that containers which can be said to be immediately associated with the person can be searched incident to the arrest even if, at the time of the search, the container is within the exclusive possession of the police. The Government reads this Court's decisions as requiring a case-by-case determination of whether a particular repository within the arrestee's control at the time of arrest is luggage or whether it is some other type of container that can be said to be immediately associated with the person (Brief for Government at 14-19). This position is essentially rejected by the state, which recognizes that a rule which would distinguish

between various types of repositories is inconsistent with the Fourth Amendment (Brief for Petitioner at 20-21).

The Government bases its claim on the following passage from *Chadwick:*

> "Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest." 433 U.S. at 15.

According to the Government, the implication of the qualifying phrase "not immediately associated with the person of the arrestee" is that personal property that is so associated may be subject to a search at the station house. The Government argues that Lafayette's shoulder bag was like a purse or wallet, which ordinarily is carried on the person or kept within ready access at all times, and, therefore, according to the Government, was immediately associated with his person (Brief by Government at 15-17).

Chadwick, however, involved the question whether a warrant was required to open a footlocker that was lawfully in police possession. 433 U.S. at 7 n.3. The Court answered this question in part (3) of the opinion where it concluded that it was unreasonable to conduct a warrantless search. 433 U.S. at 11. The qualifying phrase in question is contained in part (4) of the opinion and is not stated as part of the holding of the case. Therefore, it would appear that the Court only meant the phrase to encompass searches of clothing being worn. *See* 433 U.S. at 16 n.10. There is no reason to read the qualifying phrase more broadly so as to include repositories such as shoulder bags, particularly since there was no need for the Court in *Chadwick* to discuss such matters.[28]

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[28] The situation is analogous to a passage in *Peters* v. *New York*, 392 U.S. 40 (1968), which drew attention in *United States* v. *Robinson*, 414 U.S. 218, 229 (1973):

> We do not believe that the Court in Peters intended in one unexplained and unelaborated sentence to impose a novel and

Although some courts do not view the qualifying phrase from *Chadwick* to exempt containers, other courts find that the qualifying phrase does exempt certain types of containers and litigate on a case-by-case basis whether a particular container is luggage or simply property immediately associated with the person.[29] Application of this test, which is based upon one unelaborated phrase taken out of context, predictably, has resulted in conflicting results over whether containers such as a purse, shoulder bag, backpack, briefcase or suitcase are immediately associated with the person.[30] Some courts, which feel compelled to apply *Chadwick's* supposed qualifying-phrase test, have found it to be so unworkable that they have

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far-reaching limitation on the authority to search the person of an arrestee incident to his lawful arrest.

See Snyder v. *State*, 629 S.W.2d 930 (Crim. App. Tex. 1982) (Clinton, J., dissenting).

[29] *Compare People* v. *Helm*, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981); *United States* v. *Monclavo-Cruz*, 662 F.2d 1285 (9th Cir. 1981), *with Dawson* v. *State*, 40 Md. App. 640, 395 A.2d 160 (1978); *Hinkel* v. *Anchorage*, 618 P.2d 1069 (Alas. 1980).

[30] Cases finding a container to be immediately associated with the person include *People* v. *Harris*, 105 Cal. App. 3d 204, 164 Cal. Rptr. 296 (1980) (purse); *Dawson* v. *State*, 40 Md. App. 640, 395 A.2d 160 (1978) (purse); *United States* v. *Graham*, 638 F.2d 1111 (7th Cir.), *cert. denied*, 450 U.S. 1034 (1981) (shoulder purse); *Hinkel* v. *Anchorage*, 618 P.2d 1069 (Alas. 1980) (purse); *Stewart* v. *State*, 611 S.W.2d 434 (Crim. App. Tex. 1981) (purse); *Farb* v. *State*, 634 S.W.2d 14 (Ct. App. Tex. 1982) (backpack); *Jones* v. *State*, 640 S.W.2d 918 (Crim. App. Tex. 1982) (briefcase).

Those finding various containers not to be immediately associated with the person include *United States* v. *Corbin*, 494 F. Supp. 244 (M.D. N.C. 1980) (purse); *United States* v. *Farrar*, 470 F. Supp. 128 (S.D. Miss. 1979) (purse); *Ulesky* v. *State*, 379 So. 2d 121 (Dist. Ct. App. Fla. 1979) (purse); *United States* v. *Schleis*, 582 F.2d 1166 (8th Cir. 1978) (briefcase); *Miller* v. *Superior Court*, 127 Cal. App. 3d 494, 179 Cal. Rptr. 783 (1981) (brown paper bag and tote bag).

fashioned holdings based upon state constitutional grounds. *See, e.g., State* v. *Caraher*, 293 Or. 741, 749-50, 653 P.2d 942 (1982).

Lafayette's position is that no qualifying-phrase test was established by *Chadwick*. Yet, even if the Court did intend such a rule, it is unworkable. As noted in *United States* v. *Ross*, ____ U.S. at ____, 72 L. Ed. 2d 572, 592 (1982), a constitutional distinction between "worthy" and "unworthy" containers is foreclosed by the central purpose of the Fourth Amendment, which protects privacy interests. Accordingly, no rule should be adopted which would require courts to determine on a case-by-case basis whether items such as boxes, paper bags, purses, carry-on luggage and even the hobo's knitted scarf are luggage-like repositories or simply effects which are immediately associated with the person.[31]

A more workable rule, consistent with the protection of privacy interests, would allow containers which are accessible to the arrestee to be searched contemporaneously with the arrest; however, once the accused is secured at the station house and the container has been removed from his reach, no warrantless search should take place in the absence of exigent circumstances. This rule should apply to containers which are not part of the clothing of the citizen and, therefore, can be reduced to the exclusive control of the police without removal

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[31] Factors relied upon in applying this test include whether the container is normally carried by the person or remains within his control and whether it serves the same function as pockets. *See, e.g., United States* v. *Berry*, 560 F.2d 861 (7th Cir. 1977), *vacated on other grounds*, 571 F.2d 2 (7th Cir.), *cert. denied*, 439 U.S. 840 (1978). It should not be overlooked that the state, by not raising this issue at the suppression hearing, prevented the development of evidence pertaining to these factors. There is not even a description of the shoulder bag in the record.

of the arrestee's clothing. *See State* v. *Caraher*, 293 Or. at 770-71 (Lent, C.J., dissenting).[32]

In sum, Lafayette had a high expectation of privacy in his shoulder bag independent of that in his body and clothing. Moreover, the state did not meet its burden to show the need for the warrantless search. The delayed search was thus beyond the scope of one incident to arrest. Furthermore, it was unreasonable, particularly because there was no probable cause to search and the search was not based on any exigency.

CONCLUSION

For the foregoing reasons the decision of the Appellate Court of Illinois should be affirmed.

Respectfully submitted,

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[32] A wallet or other container, such as a sealed letter or package, within an arrestee's clothing logically would fall within this rule and would not be subject to a station-house search. However, this Court need not decide in this case whether such items are like clothing and, therefore, part of the person and subject to be searched pursuant to *Robinson* or *Edwards*. *See People* v. *Bean*, 107 Ill. App. 3d 662, 437 N.E. 2d 1295 (1982), *petition for cert. filed*, (No. 82-948).

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No. 81-1859

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S REPLY BRIEF ON MERITS

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CERTIORARI GRANTED NOVEMBER 8, 1982

QUESTION PRESENTED FOR REVIEW

Whether the police may search a lawfully arrested individual and a purse he is carrying, without a warrant, as part of a normal booking procedure following a lawful arrest at another location.

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In The

Supreme Court of the United States

October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S REPLY BRIEF ON MERITS

ARGUMENT

I.

THE ISSUES NOW BEFORE THIS COURT WERE RAISED PROPERLY BELOW.

Respondent's lawful arrest authorized the search of his purse under two separate traditional custodial search theories. First, the arrest authorized an inventory. *South Dakota v. Opperman*, 428 U.S. 364 (1976). Second, it authorized a search incident to arrest. *United States v. Robinson*, 414 U.S. 218 (1973). The State raised both theories in the trial and appellate courts below.

The appellate court analyzed and decided the case under both theories. Accordingly, this Court maintains jurisdiction to decide the case under both custodial search theories.

The Appellate Court of Illinois based its decision regarding inventory directly on the fourth amendment. (A. at 28-30). The court considered no state ground in holding the inventory unreasonable and that it, "violated the fourth amendment". (A. at 30). Thus, this case presents the clear-cut constitutional question of whether the inventory violated the fourth amendment. Therefore, this case is properly before this Court. *See, Delaware v. Prouse*, 440 U.S. 648 (1979). *See also, South Dakota v. Neville*, 43 CCH S.Ct. Bull 778 (February 22, 1983).

Respondent contends, however, that this Court may not decide the issue of search incident to arrest because that question was allegedly not raised properly in the lower courts. Respondent's erroneous contention does not preclude this Court from deciding this case. Respondent asserts that the issue of search incident to arrest "should not be reached since it was rejected by Illinois courts on an adequate and independent state ground, i.e., the Illinois rule that an issue is waived if not raised in a timely fashion". (Respondent's Brief at 21). This Court need not decide whether the issue of search incident to arrest is properly before the Court unless it finds the inventory unlawful. Moreover, the search incident to arrest issue is properly before this Court in that: the Appellate Court of Illinois reached and decided the issue; the court did not base its decision regarding the issue on an adequate and independent state ground; the issue was raised in the trial court; and this Court need not distinguish between inventory and search incident to arrest to decide this case.

Both issues were raised below and now are appropriately before this Court. Respondent concedes the inventory issue was raised below and decided solely on the fourth amendment. Accordingly, both parties agree that the Writ of Certiorari was properly granted and this Court may decide this matter.

A. The Appellate Court Reached And Decided Whether The Search Constituted A Valid Search Incident To Arrest Under The Fourth Amendment.

This Court may consider the issue of search incident to arrest because the Appellate Court of Illinois reached and decided that question. *Jenkins v. Georgia*, 418 U.S. 153 (1974); *Raley v. Ohio*, 360 U.S. 423 (1959).

The Appellate Court of Illinois began its analysis of this case by stating, "[t]he issue presented is whether a warrantless search of the defendant's (Ralph LaFayette) shoulder bag, made during booking procedures following a valid custodial arrest, was unreasonable and, thus violated the defendant's fourth and fourteenth amendment rights." (A. at 25). The court, summarily found, however, that the State waived the argument that the search was reasonable as incident to a lawful custodial arrest by failing to raise it below. Nevertheless, the court went on to devote two full pages of its five and one-half page opinion analyzing and deciding the search incident to arrest question. The court then went on to discuss *United States v. Robinson*; *United States v. Edwards*; *United States v. Chadwick*; and *Arkansas v. Sanders*. The court then devoted one and one-half pages to analyzing the inventory question and discussing *South Dakota v. Opperman*. The court concluded:

> the postponed warrantless search of the defendant's shoulder bag was *neither incident to his lawful*

> *arrest* nor a valid inventory of his belongings and thus, *violated the fourth amendment.*
>
> Accordingly, we affirm the suppression order entered in the Circuit Court of Kankakee County.

(A. at 30) (emphasis added). Thus, the appellate court reached the question of search incident to arrest, discussed it fully and determined that the search violated the fourth amendment, in part, because it did not constitute a valid search incident to arrest.

Jenkins v. Georgia posed a similar situation. The case involved a challenge to a conviction under the Georgia pornography statute. The Georgia Supreme Court decided the case as a matter of state law. *Jenkins v. State*, 230 Ga. 726, 199 S.E.2d 183 (1973). The court, however, went on to discuss and decide the question under first amendment analysis. On appeal, the State argued that this Court could not properly decide the case because the petitioner did not raise the first amendment issue in his state appeal and the lower court decision was supported by adequate state grounds. This Court rejected the State's argument, reasoning:

> whether or not appellant argued this constitutional issue below, it is clear that the Supreme Court of Georgia reached and decided it. That is sufficient under our practice.

418 U.S. at 157, *citing, Raley v. Ohio.*

Similarly, in this case, the Appellate Court of Illinois reached and decided the issue of search incident to arrest. The court broadly defined the issue on appeal stating it simply in terms of whether the search, "was unreasonable and thus violated the defendant's fourth and fourteenth amendment rights." (A. at 25). The court then devoted the majority of its analysis to the search incident to arrest issue rather than the inventory ques-

tion. It cited and discussed the relevant decisions of this Court concerning search incident to arrest. Finally, the court held that the search violated the fourth amendment because it was, "*neither* incident to his lawful arrest nor a valid inventory of his belongings." (A. at 30).

Thus, the Appellate Court of Illinois clearly reached and decided the issue of search incident to arrest. Accordingly, this Court may decide that issue.

B. The State Raised The Issue Of Search Incident To Arrest At The Trial Level.

At the trial court hearing on Respondent's motion to suppress, the State summarized its view of the case by stating, "[t]he question is is there a constitutional bar to looking into that bag." (A. at 18). After the hearing, *but before the court's decision* on the motion to suppress, the State submitted a brief in opposition to the motion. Respondent submitted no brief in support of his motion. In its brief, the State argued that the police conducted "a search of defendant's person which extended to all of his personal belongings which he had on him at the time." (A. at 20). The State further argued, "[t]his search may be a full search of the person." *Id.*, *citing*, *United States v. Robinson*. Thus, the State raised the issue of search incident to arrest and cited the controlling authority supporting its position. Respondent, however, alleges that the State failed to raise the issue of search incident to arrest at the trial level because, "its trial court brief in opposition to the motion to suppress which, according to the state raised the [sic] search-incident-to-arrest question, was filed twenty days after the hearing." (Respondent's Brief at 3). Respondent neglects to note that after the hearing the trial court took the

matter under advisement (A. at 18) and Respondent never filed a post-hearing brief in support of his motion to suppress. Although the State's brief was filed twenty days after the hearing, the court received it before rendering a decision on the motion. The trial court did not decide the motion and enter its order until more than a week after receiving the State's brief. (A. at 22).

The decision granting the motion to suppress did not become final until the trial court entered its order suppressing the evidence. *People v. Fuentes*, 91 Ill.App.3d 71, 414 N.E.2d 876 (1980). *See also, United States v. Indrlunas*, 411 U.S. 216 (1972); *Hall Township H.S. Dist. No. 502 v. County Board of School Trustees*, 80 Ill. App.2d 475, 225 N.E.2d 28 (3d Dist. 1967). The Illinois courts have held that an issue may be preserved for appeal by raising it as late as in a post-order motion to reconsider. *See, People v. Holloway*, 86 Ill.2d 78, 91, 426 N.E.2d 871 (1981). Here, the State raised the issue prior to an entry of order on the motion. Thus, the State was timely in raising the issue before the trial court's decision and entry of order.

The Illinois Supreme Court has followed the decisions of this Court in determining whether the government has waived an issue on appeal. In *People v. Keller*, 93 Ill.2d 432 (1982), the Illinois Supreme Court adopted the test set forth by this Court in *Steagald v. United States*, 451 U.S. 204 (1981). The government waives an issue on appeal, "when it has made contrary assertions in the courts below, when it has acquiesced in contrary findings by those courts, or when it has failed to raise such questions in a timely fashion during the litigation." *People v. Keller*, 438 Ill.2d at 432, *citing, Steagald* at 209.

The State argued at both the trial and appellate levels that the search of Respondent was valid as both an

inventory and as a search incident to arrest. It neither made contrary assertions nor acquiesced in contrary findings by the lower court. Both theories of custodial search were raised in a timely fashion. Accordingly, the State properly raised the issue of search incident to arrest and therefore, did not waive the issue on appeal.

Illinois courts have invariably interpreted state laws governing searches and seizures in accordance with this Court's interpretation of the fourth amendment. This is true not only for the substantive rules regulating searches and seizures but also for the procedural rules governing the right to be free from unreasonable searches and seizures. Thus, Illinois followed *Weeks* long before it was constitutionally required to do so. If this Court were to hold that the issue of search incident to arrest was properly raised under the *Steagald* standard, then there is no doubt that the Illinois courts would hold that the issue was properly raised as a matter of state law.

This Court may determine whether the issue was waived at the trial level because the waiver question was not determined on an adequate and independent state ground. Illinois clearly adopts the federal test for determining whether the State waived an issue on appeal and employed that test here. Accordingly, the decision concerning search incident to arrest was not based on an independent state ground. *Delaware v. Prouse*, 440 U.S. 648 (1979).

C. This Court Need Not Distinguish Between Inventory And Search Incident To Arrest For The Purpose Of Deciding This Case.

Assuming arguendo that the State waived the search incident to arrest argument below, this Court may still

decide this case under that theory because search incident to arrest and inventory are both merely the search of a lawfully arrested individual. The fourth amendment prohibits only unreasonable searches. The search of an individual under lawful arrest, however, has traditionally been deemed reasonable. *United States v. Robinson*. "It is the fact of the lawful arrest which establishes the authority to search . . ." *Id.*, 414 U.S. at 235.

Neither party disputes the lawfulness of Respondent's custodial arrest. (A. at 26). Accordingly, the police maintained the authority to search him.

Professor LaFave has noted, "a pre-incarceration inventory may be justified upon the additional ground that it is a search incident to arrest." 2 W. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment* 309 (1978). Thus, both issues need not be raised separately for a court to determine the reasonableness of a given custodial search of a lawfully arrested pretrial detainee. The central issue for this Court's determination is whether the search of Respondent was reasonable.

II.

THE POST-ARREST SEARCH OF RESPONDENT'S PURSE AT THE POLICE STATION WAS REASONABLE.

A. Respondent's Test For Determining The Reasonableness Of The Inventory Is Unworkable And Contradicts The Holdings Of This Court.

The police inventoried Respondent's belongings pursuant to standard departmental procedures. Respondent concedes that an inventory advances four primary interests: (1) protection of the owner's property while it remains in custody; (2) protection of the police against

claims or disputes over lost or stolen property; (3) the need to maintain jail security and prevent harm to the police; and (4) the need to ascertain or verify the identity of the person arrested. (Respondent's Brief at 13-14). Respondent contends that, "[t]here is *virtually* no need, however, for the police to search inside a shoulder bag in order to advance these interests." (Respondent's Brief at 14) (emphasis added).[1] Respondent further contends, "sealing, securing and inventorying the bag as a unit achieves the first three interests and the fourth interest—the need to verify identity—in most cases will be advanced simply by asking the arrestee to produce identification." (Respondent's Brief at 14).

Thus, Respondent advocates a type of least restrictive means analysis for determining the reasonableness of the search dependent upon the circumstances surrounding the search and arrest. Accordingly, Respondent contests the statement of this Court that, "[t]he decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable." *South Dakota v. Opperman*, 428 U.S. at 372.

In advocating his least restrictive means analysis, Respondent ignores that the fact of arrest establishes the authority to search. *United States v. Robinson.* The scope of the search does not depend upon the nature of the offense. In *Robinson*, the police arrested the defendant for a traffic violation, yet this Court held that the police did not violate the fourth amendment by searching inside the

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[1] Apparently, Respondent concedes that there is some need to inventory the bag to advance the relevant interests. Respondent states, "there is *virtually* no need" for the police to search the purse.

defendant's pocket and a closed cigarette package contained within the pocket. The search need not be contemporaneous with the arrest and may take place at the place of detention as well as at the place of arrest. *United States v. Edwards*, 415 U.S. 800, 804 (1974); *Abel v. United States*, 362 U.S. 217 (1960). The circumstances surrounding the arrest simply do not affect the authority to search. As this Court stated in *United States v. Robinson*:

> [t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and discover evidence, does not depend upon what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification.

414 U.S. at 235.

In *South Dakota v. Opperman*, this Court surveyed the lower court holdings concerning inventory and concluded, "'[w]hen the police take custody of any sort of container—be it an automobile, suitcase, or any other thing in which property may be stored—it is reasonable to search the container to itemize the property to be held by the police.'" *quoting, United States v. Gravitt*, 484 F.2d 375, 378 (5th Cir. 1973). In his concurrence in *Opperman*, Justice Powell explained the reasonableness of the post-arrest warrantless search in the context of an automobile inventory, stating:

> [t]he officer does not make a discretionary determination to search based on a judgment that certain conditions are present. Inventory searches are conducted in accordance with established police depart-

> ment rules or policy and occur whenever an automobile is seized. There are no special facts for a neutral magistrate to evaluate.

428 U.S. at 383. Accordingly, the post-arrest search of a purse is reasonable.[2] This Court need not determine whether the inventory was the least restrictive means of achieving a particular purpose.

Moreover, the analysis proposed by Respondent would impose unrealistic and burdensome requirements on the police officers who must conduct inventories daily. Respondent and his purse were inventoried in accordance with standard departmental procedures. (A. at 26).[3] Respondent would have the police randomly vary from that procedure depending on the circumstances of the arrest.

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[2] *See, United States v. Graham*, 638 F.2d 1111 (7th Cir. 1981); *United States v. Venizelos*, 495 F.Supp. 1273 (S.D.N.Y. 1980); *People v. Harris*, 105 Cal.App.3d 304, 164 Cal. Rptr. 296 (1980); *Dawson v. State*, 40 Md.App.2d 601, 395 A.2d 160 (1978); *Stewart v. State*, 611 S.W.2d 434 (Tex. Crim. App. 1981); *State v. Sabater*, 3 Kan.App.2d 601, 692 P.2d 11 (1979).

See also, cases upholding the post-arrest stationhouse search of a wallet: *United States v. Baldwin*, 644 F.2d 381 (5th Cir. 1981); *United States v. Sonntag*, 684 F.2d 781 (11th Cir. 1982); *United States v. McEachern*, 675 F.2d 618 (4th Cir. 1982); *United States v. Passaro*, 624 F.2d 938 (9th Cir. 1980); *United States v. Ziller*, 624 F.2d 562 (9th Cir. 1980); *United States v. Phillips*, 607 F.2d 808 (8th Cir. 1979).

But cf., People v. Bean, 107 Ill.App.3d 662, 437 N.E.2d 1295 (3d Dist. 1982), *cert. pending*, No. 82-948.

[3] In addition to Kankakee police procedures, Illinois law requires that, "[a]n inventory of all instruments, articles or things seized on a search without a warrant shall be given to the person arrested and a copy thereof delivered to the judge before whom the person arrested is taken * * *. If the person arrested is released without a charge being preferred against him all instruments, articles or things seized, other than contraband, shall be returned to him upon release." Ill.Rev.Stat., ch. 38, Section 108-2.

If "[t]he need to conduct a search in each type of inventory is different," (Respondent's Brief at 10), then the police must engage in a delicate balancing of constitutional issues each time they take someone into custody. This proposal is untenable given the vast number of arrests throughout the country each year.[4] Moreover, this Court has refused to require the police to engage in such a complex analysis. Quoting one commentator, the Court stated:

> 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.'

New York v. Belton, 453 U.S. at 141, *quoting*, LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S.Ct. Rev. 127, 141 (1974).

Thus, Respondent advocates that the police be required to engage in a free form balancing of complex issues to determine the least restrictive means of inventorying the

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[4] F.B.I. statistics indicate that in the year preceding Respondent's arrest, police officers across the country made more than 10.2 million arrests. *1979 F.B.I. Uniform Crime Reports*, table 24 at 188. Respondent would require that in each instance, the police undertake a constitutional analysis to determine whether the search protects the interests advanced by an inventory.

belongings of a lawfully arrested individual. Accordingly, Respondent's analysis is unworkable and contradicts the holdings of this Court.

B. Respondent's Alternative For Inventorying His Purse Would Not Protect The Interests Traditionally Advanced By An Inventory.

Respondent erroneously contends that, "sealing, securing and inventorying the bag as a unit," protects the interests advanced by an inventory. This method fails to sufficiently achieve the purpose of an inventory.

Respondent's suggested inventory method would neither adequately protect the owner's property nor protect the police against false claims of stolen property. Prisoners frequently accuse their jailors of stealing.[5] A thorough standardized inventory procedure which allows the individual to observe the itemization of his property and sign an inventory list, ensures that the individual will retrieve all the items he brought into the facility and discourages police or jail authorities from tampering with

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[5] *See* cases involving prisoner allegations of jailor wrongdoing regarding prisoner personal property: *Loftin v. Thomas*, 681 F.2d 365 (5th Cir. 1982); *Madyun v. Thompson*, 657 F.2d 868 (7th Cir. 1981); *Kimbrough v. O'Neill*, 523 F.2d 1057 (7th Cir. 1975); *Moore v. Gluckstein*, 548 F.Supp. 165 (D. Maryland 1982); *Falzerano v. Collier*, 535 F.Supp. 800 (D. N.J. 1982); *Hendrix v. Faulkner*, 525 F.Supp. 435 (N.D. Ind. 1981).

The Illinois Department of Corrections employs full-time personnel at its correctional facilities to deal with the problem of resident personal property. Extensive departmental and institutional administrative regulations govern the actions of correctional officers concerning resident personal property. *See e.g.*, Illinois Department of Corrections *Administrative Regulations*. Nonetheless, officials estimate that they receive in excess of 250 resident grievances each year alleging that correctional officers lost, stole, or damaged personal property.

the individual's possessions. It also prevents the individual from claiming the police deprived him of an item which he, in fact, did not possess at the time of the inventory. Respondent's alternative would encourage false claims against the police because there would be no way of knowing what the individual brought with him.

Respondent's suggested inventory method would jeopardize the security of the detention facility. If police were required to simply seal and store a purse they could not ascertain whether its contents posed any threat to the safety of the institution. Although the instances of a firearm, explosive or some other dangerous object being present in the purse might not be common, there is often nothing which would alert the police to the presence of such items absent an inventory. Justice Powell explained this dilemma with respect to automobiles in his concurrence in *Opperman*, stating:

> Except in rare cases there is little danger associated with impounding unsearched automobiles. But the occasional danger that may exist cannot be discounted entirely. *See Cooper v. California*, 368 U.S. 58 (1967). The harmful consequences in those rare cases may be great, and there does not appear to be any effective way of identifying in advance those circumstances or classes of automobile impoundments which represent a greater risk.

428 U.S. at 378. Similarly, the harmful consequences of storing an uninventoried purse may be great and there is no effective way of determining in advance whether a particular situation presents a greater risk. Moreover, any such determination would have to occur on a case-by-case basis, thereby requiring that the police engage in the ad hoc balancing this Court has rejected. *See, New York v. Belton*, 453 U.S. at 458.

Respondent's suggested inventory method would prevent police from effectively ascertaining the identification of the arrestee. Respondent contends that police can verify identity, "simply by asking the arrestee to produce identification". (Respondent's Brief at 14). This alternative would hinder effective verification and increase the danger to police officers. If an arrestee is allowed to verify his identity himself, he could easily produce false identification which would corroborate the false name or address he has given police. Respondent's method prevents police from determining whether Respondent has chosen from false and authentic identification contained in the purse. Furthermore, Respondent's method exposes the police to the danger that the arrestee will reach inside the purse for the purpose of producing identification and withdraw a weapon or some other harmful object.

Thus, Respondent's suggested inventory method fails to protect the interests advanced by the thorough inventory conducted in accordance with Kankakee police procedures.

III.

ANY LIMITED EXPECTATION OF PRIVACY WHICH RESPONDENT MIGHT HAVE MAINTAINED IN HIS PURSE DID NOT OUTWEIGH THE SIGNIFICANT AND LEGITIMATE SECURITY INTEREST OF THE STATE IN INVENTORYING THE PERSONAL EFFECTS OF PRETRIAL DETAINEES.

The search of Respondent after his lawful arrest was reasonable. "It is the fact of the lawful arrest which establishes the authority to search . . ." *United States v. Robinson*, 414 U.S. 218, 235 (1973). Respondent concedes the lawfulness of the arrest yet argues that the inventory

was unreasonable because Respondent, "had a high expectation of privacy in the contents of the bag and there was no need for the police to search inside it." (Respondent's Brief at 9).

Upon his arrival at the Kankakee police station, Respondent became a pretrial detainee—"those persons who have been charged with a crime but who have not yet been tried on the charge." *Bell v. Wolfish*, 441 U.S. 520 523 (1979). "[G]iven the realities of institutional confinement, any reasonable expectation of privacy that a detainee retain[s] would necessarily be of a diminished scope". *Id.* at 557.

In *Bell* this Court rejected challenges to body cavity searches of pretrial detainees and inmates conducted at the New York Metropolitan Correctional Center (MCC). The searches occurred after contact visits with persons residing outside the prison. The visits took place in a glass enclosed room and were continuously monitored by corrections officers. The inmates wore only one-piece jumpsuits with zippers in the front. Corrections officers checked visitors and their packages with metal detectors, fluoroscopes, and by hand, before permitting entry into the visiting room. Additionally, the officers could require visitors to leave their handbags or packages outside the visiting room. MCC policies required a cavity search of residents after each visit.

The plaintiffs charged that the searches violated their reasonable expectation of privacy protected by the fourth amendment. This Court noted, "[w]e do not underestimate the degree to which these searches may invade the personal privacy of inmates." *Id.* at 560. Nevertheless, the Court balanced, "the significant and legitimate security interests of the institution against the privacy

interest of the inmates," and concluded that the searches were reasonable. *Id.*

Thus, a pretrial detainee retains only a minimal expectation of privacy. The expectation of privacy in a person's own body may be outweighed by significant State security interests. Accordingly, the expectation of privacy in Respondent's purse is clearly outweighed by the significant and legitimate security interests of the Kankakee Police in inventorying the immediate personal effects of pre-trial detainees worn by them to the police station.

CONCLUSION

For the foregoing reasons, the decision of the Appellate Court of Illinois should be reversed.

Respectfully submitted,

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No. 81-1859

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF ILLINOIS,

Petitioner,

vs.

RALPH LAFAYETTE,

Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY

The CHICAGO POLICE DEPARTMENT, the GULF AND GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC., the ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., and the NATIONAL SHERIFFS' ASSOCIATION, INC.

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IN THE

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RALPH LAFAYETTE,

Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY The CHICAGO POLICE DEPARTMENT, the GULF AND GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC., the ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., and the NATIONAL SHERIFFS' ASSOCIATION, INC.

This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Tyrone C. Fahner, Attorney General, State of Illinois, Counsel for Petitioner, hereinafter called "State", and Robert Agostinelli, Esq., Counsel for Respondent, hereinafter called "defendant". Letters of Consent of both parties have been filed with the Clerk of this Court. Municipal governments are not required to obtain consent to file as *amicus curiae*.

INTEREST OF AMICI

AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* forty-seven times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

THE CHICAGO POLICE DEPARTMENT, CITY OF CHICAGO, a municipal corporation, is represented by its chief executive officer, commanding the second largest metropolitan police department in America. He is responsible for the effective investigation, charging of crime, and processing of arrestees, in one of the most populous and diverse areas of our nation.

THE GULF & GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC. (GGP), is a non-profit, tax-exempt corporation, supporting the operations of a public interest law firm. It functions nationwide, although its efforts are concentrated most heavily in the states of the gulf coast and great plains regions. All litigation undertaken by GGP is approved by its Board of Directors, who are attorneys and business persons residing throughout this midwestern area.

Among other goals, GGP seeks to preserve a rational, workable criminal justice system and an appropriate constitutional balance between the Federal Government and the states. In pursuit of these goals, GGP has appeared as *amicus*

curiae in the Supreme Court of the United States, the Federal District Courts, in the Circuit Courts of Appeals, and in various state courts.

THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., is a not-for-profit Illinois association and consists of over 600 members who are Illinois police chiefs and senior law enforcement executives. It seeks to represent in our courts the concern of police administrators with the problems of crime and police effectiveness in dealing with crime, with special emphasis upon the problems and concerns of police officers who face numerous legal and practical problems on a day-by-day basis in their efforts to protect public safety.

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 75 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

THE NATIONAL SHERIFFS' ASSOCIATION, INC. (NSA), is a not-for-profit organization, with over 50,000 members, including sheriffs and their deputies, municipal, state and federal law enforcement officers, and other criminal justice professionals. NSA encourages and promotes the fair and efficient administration of justice through the establishment of standards, research, educational courses and publications and crime prevention programs.

Amici's interest arises from the compelling constitutional and policy questions pertaining to routine law enforcement booking procedures involved in the opinion of the court below reported as *People* v. *Lafayette,* 99 Ill. App. 3d 830, 425 N.E. 2d 1383 (3d Dist. 1981), in which it was held that a warrantless search of an arrestee's shoulder bag, which was not seized from

him until during the booking process, violated the Fourth Amendment because the purse-like bag carried an expectation of privacy independent of the defendant's body and clothing. We focus **only** upon the narrow issue of the inventory search conducted at the time of a defendant's incarceration upon being taken into custody. We note that the State of Illinois also argues the propriety of a "delayed" search incident to arrest. While this argument poses an interesting question, *amici* do not presently address that issue.

ARGUMENT

AFFIRMANCE OF THE DECISION OF THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT, AS IT PERTAINS TO BOOKING SEARCHES, WILL LEAD TO IRREPARABLE DAMAGE TO THE INTERESTS OF LAW ENFORCEMENT AGENCIES, THE PUBLIC, AND ARRESTEES THEMSELVES, BY PREVENTING ROUTINE INVENTORY SEARCHES DURING NORMAL BOOKING PROCEDURES.

Amici will not discuss at length the legal arguments made by the State in this case on the inventory search issue, although we are in general accord with such arguments. We will, however, address some of the important policy issues involved in this case, and point out their importance to all groups and concerned parties.

We note initially that the ruling of the court below is quite clearly against the weight of authority in the state and federal courts. Professor Wayne R. LaFave, in his treatise on the Fourth Amendment states the rule succinctly:

> Currently, such evidence [resulting from routine booking searches] is admissible, and this is generally so even when the inventory has been most thorough. It is customary for the booking inventory to involve an item-by-item examination of everything in the arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search.

2 W. LaFave, *Search and Seizure*, sec. 5.3 at 307 (1978).

Amici submit that the examination of the contents of defendant's shoulder bag, or purse, was a classic routine inventory search conducted pursuant to standard detention facility procedures. In *South Dakota* v. *Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), this Court upheld a routine inventory search of an impounded automobile. Various other courts have extended the rationale of *Opperman* to routine inventory searches of articles possessed by a person

lawfully taken into custody. *See, e.g., United States* v. *Bloomfield,* 594 F.2d 1200, 1201-1202 (8th Cir. 1979); *Sumlin* v. *State,* 266 Ark. 709, 587 S.W.2d 571, 577 (1979); *Dearing* v. *State,* 393 N.E.2d 167, 171 (Ind. 1979). As noted by the Supreme Court of Indiana in *Dearing* v. *State, supra:*

> Our analysis of this issue begins with the case of *South Dakota* v. *Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000. The issue there before the United States Supreme Court was the propriety of an inventory of an automobile; however, an examination of Justice Burger's majority opinion reveals general guidelines to determine the constitutionality of any type of inventory. The Court, in finding a distinction between searches pursuant to criminal investigations and 'noncriminal' inventories, noted that the making of inventories is not governed by the 'probable cause' concept, nor is a warrant required. Rather, the test of the constitutionality of an inventory is whether, under all the circumstances, the intrusion was reasonable.

393 N.E.2d at 171.

In order to test this issue of reasonableness, it is helpful to consider the three basic interests involved in inventory searches, whether of vehicles, or of containers found on the person of an arrestee, such as wallets, purses, handbags, briefcases, etc. The three interests were identified by this Court in *Opperman* as: (1) protection of the arrestee's property while it remains in law enforcement custody; (2) protection of the officer against claims of lost or stolen property; and (3) protection of the officer from danger. *South Dakota* v. *Opperman, supra,* 428 U.S. at 369.

Although there is little dispute over these principles, cases involving the inventory of closed containers implicate weighty Fourth Amendment interests. Some courts have held that a closed or locked container should be inventoried as a unit without searching its contents, while others have held that the contents of closed or locked containers must be inventoried to protect the three interests we have just noted. The courts have

often employed a balancing test, weighing the arrestee's right to privacy in the contents of the container against the State's interest in protecting these interests. It should also be noted that when a person carries items of personal property in public places, even if they are on his person, it is reasonable to assume a diminished expectation of privacy for Fourth Amendment purposes, compared to the privacy interest that would be involved in a home or other private setting.

Most of the closed container cases have involved items similar to that in the instant case, i.e., luggage, briefcases, purses, handbags, and the like.[1] With respect to wallets, which *amici* submit are not functionally different from the typical closed containers cited in these cases, and certainly not from the relatively small purse involved in the instant case, the courts are apparently uniform in holding that it is permissible to inventory the contents of an arrestee's wallet pursuant to an established law enforcement agency inventory policy.[2]

---

[1] *See, e.g., United States* v. *Monclavo-Cruz*, 662 F. 2d 1285 (9th Cir. 1981) (purse); *United States* v. *Bloomfield, supra* (knapsack); *United States* v. *Schleis*, 582 F. 2d 1166 (8th Cir. 1978) (locked briefcase); *Sumlin* v. *State, supra* (purse); *Parris* v. *State*, 270 Ark. 269, 604 S. W. 2d 582 (Ct. App. 1980) (purse); *Delatte* v. *State*, 384 So. 2d 245 (Fla. App. 1980) (travel bag); *People* v. *Helm*, 89 Ill. 2d 34, 431 N. E. 2d 1033 (1981) (purse); *Dearing* v. *State, supra* (suitcase); *Bradford* v. *State*, 401 N. E. 2d 77 (Ind. App. 1980) (purse); *People* v. *Miller*, 312 N. W. 2d 225 (Mich. App. 1981) (briefcase); *People* v. *Merchant*, 86 Mich. App. 355, 272 N. W. 2d 656 (1978) (briefcase); *State* v. *Prober*, 98 Wis. 2d 345, 297 N. W. 2d 1 (1980) (purse); *State* v. *McDougal*, 68 Wis. 2d 399, 228 N. W. 2d 671 (1975) (locked suitcase).

[2] *See, e.g., United States* v. *Matthews*, 615 F. 2d 1279, 1286 (10th Cir. 1980); *United States* v. *Gallop*, 606 F. 2d 836, 839 (9th Cir. 1979); *United States* v. *Jenkins*, 496 F. 2d 57, 73 (2d Cir.), *cert. denied*, 420 U. S. 925 (1975); *United States* v. *Gardner*, 480 F. 2d 929, 931 (10th Cir.), *cert. denied*, 414 U. S. 977 (1973); *State* v. *Gelvin*, 318 N. W. 2d 302 (N. D. 1982); *State* v. *Lind*, 322 N. W. 2d 826 (N. D. 1982); *State* v. *Mordeszewski*, 68 Wis. 2d 649, 229 N. W. 2d 642, 647-649 (1975).

Some few courts have reasoned that the State's interests can be adequately served in cases involving the inventory of closed objects or containers, if such items are merely taped shut, without inventorying their contents, and listed on the inventory as "one (container or closed object) and contents." *See, e.g., People* v. *Helm,* 89 Ill. 2d 34, 431 N. E. 2d 1033, 1035 (1981); *People* v. *Bean,* 107 Ill. App. 3d 662, 437 N.E. 2d 1295, 1300 (1982); *State* v. *Gelvin,* 318 N.W. 2d 302, 318 (N.D. 1982). That view, however, falls far short of adequately protecting the proper interests of the State in these cases, or, indeed, even the protection of the arrestee. We agree with the statement of the Supreme Court of North Dakota in *State* v. *Gelvin, supra,* in assessing the efficacy of such a procedure, and respectfully urge this Court to consider its practical implications.

> In order to fully protect the State's interest in shielding its officers from frivolous claims or disputes over lost or stolen property, and to fully protect the detainee's property while it remains in police custody, it was necessary to inventory the contents of the wallet. As noted by the Court of Appeals of Michigan in *People* v. *Walker,* 58 Mich. App. 519, 228 N.W. 2d 443, 446 (1975): "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying." We also agree with the language of Justice Hansen of the Supreme Court of Wisconsin in his dissent in *State* v. *McDougal,* 68 Wis.2d 399, 228 N.W.2d 671, 679 (1975): "For the court-specified purpose of protecting against future claims of impounded property being missing, such inventorying goes to contents, as well as container. To list, '1 purse' or '1 pocketbook' would provide no protection at all to the police against a claim that $100 or $1,000 was later missing from purse or pocketbook."

318 N.W.2d at 306.

In addition to the impracticability and ineffectiveness of the limited procedure advocated by a few courts, its very real danger to law enforcement officers and the safety of the custodial facility should be considered by this Court. Since it is

permissible to search an arrestee's person during the booking procedure, in part to protect the officer from weapons, explosives, and the like, it should be permissible to search a hand-held purse or shoulder bag, items that are intimately connected with the arrestee's person. In fact, these items may pose an even greater threat to the safety of law enforcement officers, in view of present day sophisticated weaponry. As the court in *United States* v. *Berry*, 560 F.2d 861, 864 (7th Cir. 1977) stated: "(a purse) might be characterized as 'immediately associated with the person of the arrestee'* * *." And as noted by Justice Daniel Ward, in his dissent in *People* v. *Helm, supra:*

> Who is able to say what a purse of one under arrest may contain? "Growing Up Underground," an autobiographical reminiscence of Jane Alpert, who was described as a woman radical of the 1960's, was reviewed in December 1981 in a Chicago newspaper. A portion of the review reads: "Several weeks later, as Alpert transported a purse full of dynamite to the New York City Federal Building, she felt, 'as I imagined I would on my wedding day.' " In October 1981, in New York, a gun battle followed a robbery attempt on an armored truck. Two police officers and a security guard were murdered. Two women members of the so-called radical underground were among those arrested at the time. The public and police would be astonished to find that the search of the women's purses incident to their arrest or when making an inventory at their booking at the police station might be held an unreasonable search and any evidence seized declared to be inadmissible.

431 N.E.2d at 1036.

Amici do not urge this Court to adopt an overbroad rule that would permit the police to conduct searches violative of the Fourth Amendment under the guise of an inventory search. Nor do we seek to diminish the reasonable expectation of privacy that would be violated by a strip search conducted in the absence of probable cause. Sufficient restraint upon possible abuse is provided by reference to typical jail or lock-up procedures followed by law enforcement agencies throughout

the country. These procedures minimize the possibility of abuse and at the same time protect the valid interests of all concerned. Additionally, the mere fact that the police also have a suspicion that contraband or evidence will be found should not invalidate an otherwise valid inventory search conducted pursuant to such a procedure. *United States* v. *Ducker*, 491 F.2d 1190, 1192 (5th Cir. 1974); *Mooney* v. *State*, 243 Ga. 373, 254 S.E.2d 337, 344, *cert. den.*, 444 U.S. 886 (1979).

We note that the officer in the instant case acted pursuant to such a standard detention facility procedure. Sergeant Mietzner of the Kankakee, Illinois, Police Department, the booking officer, testified that when he arrests a person with a purse, he examines the contents of the purse as a part of the routine booking procedure. 425 N.E. at 1384; Petition for Writ of Certiorari to the Appellate Court of Illinois, Third Judicial District, No. 81-1859, p. 4. In accordance with that routine procedure, a Property Index Card of the Kankakee Police Department was prepared, describing the defendant's property. A facsimile of the Card used in this case is reproduced here:

PROPERTY INDEX CARD — KANKAKEE POLICE DEPARTMENT

1. Ledger No. 80P-539 — 2. Bin No. 09.59
3. Name of Owner LAFAYETTE, RALPH — 4. Case No. 80A-580
5. Address ST ANNE — 6. Phone
7. Office FRAZIER — 8. No. of Pieces
9. Phy. Ev. ( ) 10. Per. Prop. (X) 11. Found Prop. ( ) 12. Rec. Prop. ( )
13. Date 9-1-80 — 14. Time M
15. Description of Property BLK SHOES $79.00 USC RRD POUCH 3 KEYS BAGG PANTS VEST BAGG SHIRT
16. Location
17. Claimed by Owner Date 02-Sept 80 — 18. Time 3:42 P M
19. Signed: Owner [signature]
20. Released by: [signature]
21. Sold at Auction: Date

This standard procedure, and the use of the written record card, comports with the recommended procedures adopted by

the National Sheriffs' Association, Inc. (NSA). NSA is the national standard-setting organization for the thousands of sheriffs' detention facilities in the United States. In many jurisdictions the sheriff's detention facility is the place of initial reception and processing of arrested persons. In its *Handbook on Jail Security, Classification, and Discipline,* published in 1974, NSA makes the following recommendations:

> The Booking Record
>
> The booking record should be prepared by the arresting agency, since that agency will prosecute and the booking record will contain a positive identification of the arrestee, as well as other pertinent information.* * *
>
> The following items should appear on the booking record:
>
> * * *
>
> Property taken by jailer with a description of articles (see copies of property forms)
>
> | | | |
> |---|---|---|
> | Money | Glasses | Lighter |
> | Watches | Wallet | Knife |
> | Keys | Rings | Miscellaneous personal articles (indicated by "P.A.") |
>
> * * *
>
> Information on the booking slip should contain property *not* taken as well as property taken.[3]

Handbook on Jail Security, Classification, and Discipline, National Sheriffs' Association 8, 12, 13, 14-18 (1974).

---

[3] Examples of booking record forms are illustrated in the *Handbook,* including:

* * *

San Joaquin County (California) Jail;
Denver County (Colorado) Jail;
Jefferson County Sheriff's Department—Golden, Colorado;
Weber County (Utah) Sheriff's Department;
Salt Lake County (Utah) Sheriff's Office.

Some examples of the language used in typical booking and inventory procedures adopted by law enforcement agencies include the following:

> Everything taken from the prisoner shall be placed on the booking counter in full view of the booking officer, the searching member and the prisoner. . . The booking officer shall take custody of all personal property found in the possession of the arrested person and enter a detailed description of the property on the arrest record.

Department General Order No. Q-3, San Francisco Police Department, San Francisco, California.

> Lockup personnel will immediately search each arrestee brought into the lockup. Searches will be conducted by Department members of the same sex as the arrestee. . . All monies, valuables, lighters, medications and/or items which could be used to effect an escape, cause an injury to the arrestee or other persons detained in the lockup, or used to deface or damage the lockup facility will be taken from the arrestee and promptly inventoried as appropriate. Either an itemized Personal Property Receipt (CPD-11.502), or Copy No. 4 (Green) of the Property Inventory (CPD-34.523) as appropriate, will be issued to the arrestee. After 72 hours have passed, property for which a Personal Property Receipt was issued that is unclaimed will be inventoried by detention personnel on the Property Inventory and processed accordingly.

Department General Order No. 82-11, Chicago Police Department, Chicago, Illinois.

> The arrested will place all personal property from his pockets on the receiving desk. Money will be counted in the presence of the arrested. It will then be documented on an inmate's financial sheet. Initials of the Receiving Officer shall be placed next to the amount documented. Jewelry and other personal property, except billfold, will be placed in a jewelry envelope with a complete description of each article documented on the outside of the envelope. Billfolds will remain with the clothing. The

financial slip and the jewelry envelope will then be turned over to the Shift Commander.

Operational Manual, Peoria County Jail, Peoria, Illinois.

A primary responsibility of the Jail Division is the custody and safekeeping of prisoner's property. Probably one of the most important functions in the Division:

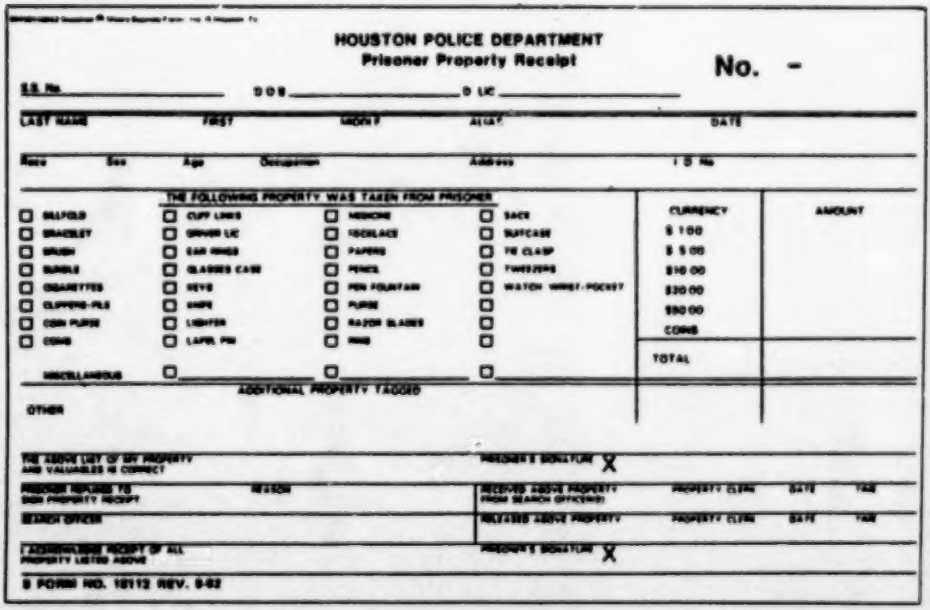
1. Has potential for tremendous liability; a. For the Police Department; b. For the individual Jail Attendant. . .

Extreme accuracy is mandatory:

1. Each item must be tabulated on Property Record;
2. Money count must be correct;. . .
3. Do not tabulate items not included in property;
4. Do not place items in Property Bag which are not itemized.

Training Outline, Houston Police Department, Houston, Texas.

A typical form utilized by law enforcement agencies in conjunction with standard booking and inventory procedures is illustrated here:



HOUSTON POLICE DEPARTMENT
Prisoner Property Receipt

No. -

S.S. No. _____ DOB _____ D LIC _____

LAST NAME | FIRST | MIDDLE | ALIAS | DATE

Race | Sex | Age | Occupation | Address | I D No.

THE FOLLOWING PROPERTY WAS TAKEN FROM PRISONER

☐ BELFOLD	☐ CUFF LINKS	☐ MEDICINE	☐ SACK
☐ BRACELET	☐ DRIVER LIC	☐ NECKLACE	☐ SUITCASE
☐ BRUSH	☐ EAR RINGS	☐ PAPERS	☐ TIE CLASP
☐ BUNDLE	☐ GLASSES CASE	☐ PENCIL	☐ TWEEZERS
☐ CIGARETTES	☐ KEYS	☐ PEN FOUNTAIN	☐ WATCH WRIST-POCKET
☐ CLIPPING-FILE	☐ KNIFE	☐ PURSE	☐
☐ COIN PURSE	☐ LIGHTER	☐ RAZOR BLADES	☐
☐ COMB	☐ LAPEL PIN	☐ RING	☐
MISCELLANEOUS	☐ _____	☐ _____	☐ _____

ADDITIONAL PROPERTY TAGGED

OTHER

CURRENCY	AMOUNT
$ 1.00	
$ 5.00	
$10.00	
$20.00	
$50.00	
COINS	
TOTAL	

THE ABOVE LIST OF MY PROPERTY AND VALUABLES IS CORRECT — PRISONER'S SIGNATURE X

PRISONER REFUSED TO SIGN PROPERTY RECEIPT — REASON

RECEIVED ABOVE PROPERTY FROM SEARCH OFFICER(S) — PROPERTY CLERK — DATE — YR

SEARCH OFFICER

RELEASED ABOVE PROPERTY — PROPERTY CLERK — DATE — YR

I ACKNOWLEDGE RECEIPT OF ALL PROPERTY LISTED ABOVE — PRISONER'S SIGNATURE X

H FORM NO. 10112 REV. 5-62

Finally, if there is any doubt that such procedures and forms serve the interests identified in *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976), simple reference to the enormous scope of the detention activity in law enforcement agencies should prove convincing. The records of the Houston, Tex., Police Department indicate that in 1981 alone, **96,055 prisoners** were booked into the Houston City Jail. *Houston Police Department Consolidated Jail Statistics:* July 1976-1982 (1982) (unpaginated; report by month—1981). It is safe to say that without the ability to conduct routine booking and inventory searches law enforcement agencies would be paralyzed in their efforts to adequately process large numbers of prisoners.

CONCLUSION

Amici respectfully submit that on the basis of established Fourth Amendment principles and sound public policy this Court should approve the type of booking and inventory search, and the admissibility of its fruits, that took place in the instant case, i.e., pursuant to a standard procedure, with the use of appropriate record forms. Such approval will give effect to the critical interests advanced by this Court in *South Dakota* v. *Opperman* in support of inventory searches, i.e., protection of the arrestee's property, protection of the officer against claims and disputes over lost or stolen property, and protection of officers from danger.

We urge that the decision of the Appellate Court of Illinois, Third Judicial District, should be reversed on the law and on the basis of sound judicial policy.

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No. 81-1859

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

RALPH LAFAYETTE,
Respondent.

On Writ of Certiorari to the
Appellate Court of Illinois,
Third Judicial District

BRIEF OF THE CALIFORNIA STATE PUBLIC DEFENDER AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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No. 81-1859

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RALPH LAFAYETTE,
Respondent.

On Writ of Certiorari to the
Appellate Court of Illinois,
Third Judicial District

BRIEF OF THE CALIFORNIA STATE PUBLIC DEFENDER AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE AND CONSENT

The State Public Defender of California is an agency of California state government which is charged with the representation on appeal of indigent criminal defendants. The outcome of the instant case will have a substantial impact upon the rights of persons represented by this office, as well as the public as a whole, to be free of routine warrantless searches of the contents of

repositories of personal effects during booking procedures. Accordingly, the State Public Defender of California is filing this brief amicus curiae in support of respondent.

This brief is filed pursuant to rule 36 of the Rules of the Supreme Court of the United States. Consent to filing of the brief has been given by counsel for petitioner and respondent, respectively. A written consent, signed by counsel for the parties, accompanies this brief.

SUMMARY OF ARGUMENT

At issue in this case is the propriety of the warrantless search of respondent's shoulder bag and its contents not at the time and place of arrest, but rather at city jail sometime after arrest. The officer who conducted the search testified that he did so in order to inventory the shoulder bag's contents. (J.A. 15.) Petitioner seeks to justify the search as a delayed search incident to arrest and as an inventory search. Amicus will argue that neither theory advanced by petitioner applies.

Amicus will demonstrate that since a man's shoulder bag, like luggage, is not immediately associated with the person of the arrestee, the search cannot be justified as a search incident to arrest since it was remote in time and place from the arrest. *United States* v. *Chadwick,* 433 U.S. 1, 15 (1977); *see also Preston* v. *United States,* 376 U.S. 364 (1964).

With respect to the inventory search rationale, amicus will argue that the "reasonableness" requirement of the Fourth Amendment mandates that repositories of personal effects be inventoried as a unit except where the

police can point to specific and articulable facts which justify a search of the repository's contents. Amicus will show that the three recognized purposes of such searches, *i.e.,* protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and protection of the police from potential danger, *South Dakota* v. *Opperman,* 428 U.S. 364, 369 (1976), are better advanced by inventorying repositories of personal effects as a unit than by a detailed inventorying of their contents. It will also be shown that inventorying as a unit protects the owner's expectations of privacy in the repository, frees the police from the onerous, unnecessary and time-wasting ministerial task of inventorying every object found in every container possessed by every arrestee, and sets forth a "straightforward rule." *See New York* v. *Belton,* 453 U.S. 454, 459 (1981). This rule informs police of what they are permitted to do and prohibited from doing and assures predictable resolution of cases contesting the propriety of inventory searches. Amicus has found that the overwhelming majority of the courts which have spoken to the issue have disapproved of inventory searches of the contents of repositories of personal effects and other containers whose contents are not in plain view, and instead have stated that the appropriate procedure is to inventory such repositories as a unit.

STATEMENT

The briefs filed by the parties and other amici adequately advise the court of the procedural history and

facts of this case. Amicus therefore will not discuss them in detail. Instead, amicus wishes to emphasize the few facts on which the constitutional issues turn. Those facts are that respondent was arrested at a theater. (J.A. 7, 11.) At the time of arrest he had in his possession a shoulder bag. (J.A. 7.) Police did not search the shoulder bag at the time and place of arrest. Instead, they searched it at the city jail after they brought respondent there. (J.A. 7, 8, 11.) The search was conducted in order to inventory the contents of the shoulder bag pursuant to standard procedures. (J.A. 15–16.) The officer testified, however, that inventory or evidence bags were available at the jail, and the shoulder bag could have been placed in an inventory bag which could then have been sealed and locked in a locker. (J.A. 15.)

ARGUMENT

I

THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE WARRANT REQUIREMENT DOES NOT APPLY TO THE SEARCH OF RESPONDENT'S SHOULDER BAG SINCE THE SHOULDER BAG WAS NOT IMMEDIATELY ASSOCIATED WITH RESPONDENT'S PERSON, AND SINCE A SEARCH INCIDENT TO ARREST OF SUCH OBJECTS MAY NOT LAWFULLY BE REMOTE FROM THE TIME AND PLACE OF ARREST [1]

[1] Amicus addresses on its merits the "delayed search incident" rationale advanced by petitioner. Amicus notes, however, that the state court ruled that petitioner waived this theory. The court based its ruling on Illinois precedent. *People* v. *Lafayette*, 99 Ill.App.3d 830, 55 Ill. Dec. 210, 425 N.E.2d 1383, 1385 (1981) and case cited.

A. The Search of the Shoulder Bag Was Impermissible Under *United States* v. *Chadwick*.

"[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' " *Mincey* v. *Arizona*, 437 U.S. 385, 390 (1978), citing *Katz* v. *United States*, 389 U.S. 347, 357 (1967). Searches incident to arrest comprise one of the recognized exceptions to the warrant requirement. *See generally, Chimel* v. *California*, 395 U.S. 752 (1969) and *United States* v. *Robinson*, 414 U.S. 218 (1973).

The purposes which underlie searches incident to arrest are to protect officers from concealed weapons and to prevent the concealment or destruction of evidence

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State procedural rules apply to cases in which federal rights are litigated in state court. *John* v. *Paullin*, 231 U.S. 583, 585 (1913); *Wolfe* v. *North Carolina*, 364 U.S. 177, 195 (1960). In *Michigan* v. *Tyler*, 436 U.S. 499, 512, fn. 7 (1978), this Court stated: "Failure to present a federal question in conformance with state procedure constitutes an adequate and independent ground of decision barring review in this Court, so long as the State has a legitimate interest in enforcing its procedural rule. Citations. The petitioner does not claim that Michigan's procedural rule serves no legitimate purpose. Accordingly, we do not entertain petitioner's . . . claim which the state court refused to consider because of procedural default." Here the Illinois court did not actually reach the issue of whether the search incident to arrest rationale pertained.

Moreover, the fact the state court below passed hypothetically on the federal issue, *see* 425 N.E.2d at 1385, is of no significance. In *Herb* v. *Pitcairn*, 324 U.S. 117, 124–26 (1945), this Court recognized that where the state court rules that a federal issue is barred by a state procedural rule, but proceeds to discuss the federal question, any decision by this Court amounts to nothing but an advisory opinion.

of crime. *Chimel* v. *California, supra,* 395 U.S. at 762–763. The scope of the search incident to arrest must be strictly tied to and justified by the circumstances which render its initiation permissible. *New York* v. *Belton,* 453 U.S. 454, 457 (1981). Thus officers may search the area into which the arrestee might reach in order to grab a weapon or an item of evidence. *Chimel* v. *California, supra,* 395 U.S. at 763. This search may extend to a drawer within reach of the arrestee. *Ibid.* It may also extend to the passenger compartment of the car the arrestee was in just before he was arrested, and to containers therein located. *New York* v. *Belton, supra,* 453 U.S. at 462, 460.

The well-recognized rule that the scope of a search incident to arrest must be strictly tied to and justified by the circumstances permitting its initiation, *id.* at 457, gives rise to limits on the time and place of the search of effects. The leading case on this point is this Court's unanimous opinion in *Preston* v. *United States,* 376 U.S. 364 (1964). In that case Preston and two companions were removed from a car, arrested for vagrancy, and taken to police headquarters. The car, which had not been searched at the time of arrest, was towed to a garage and searched. The search revealed evidence which led to conviction for conspiracy to commit bank robbery. It was argued that the search was justified as incidental to a lawful arrest. This Court rejected that contention, stating:

> "Once an accused is under arrest and in custody, then a search made at another place, without a war-

> rant, is simply not incident to the arrest. . . . We think that the search was too remote in time or place to have been made as incidental to the arrest and conclude, therefore, that the search of the car without a warrant failed to meet the test of reasonableness under the Fourth Amendment, rendering the evidence obtained as a result of the search inadmissible."

Id. at 367, 368. *Preston* remains good law insofar as it places limitations on the time and location of a search of property incident to arrest. *See, e.g., Cady* v. *Dombrowski,* 413 U.S. 433, 444 (1973); *Stoner* v. *California,* 376 U.S. 483, 486–87 (1964); *Dyke* v. *Taylor Implement Co.,* 391 U.S. 216, 220 (1968); *Vance* v. *United States,* 676 F.2d 183, 190 (5th Cir. 1982); *United States* v. *Lawsen,* 487 F.2d 468, 470 (8th Cir. 1973).

Entirely different limits with respect to time and location apply to searches of the *person* of the arrestee incident to arrest, *United States* v. *Edwards,* 415 U.S. 800 (1974).

In *Edwards,* the defendant was arrested for breaking into a post office and was placed in the local jail. Ten hours after his arrest the clothing which he had been wearing since his arrest was taken from him and searched for evidence of the crime in the form of paint chips from the post office. This Court upheld the search as being a lawful search incident to arrest, stating, in dictum, that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention." 415 U.S. at 803. This dictum, if carried to its

logical conclusion, would permit the delayed search of personal effects at a place other than that of arrest.

Edwards, however, did not set forth an absolute rule. Rather, this Court stated that "[i]n upholding this search we do not conclude that the Warrant Clause of the Fourth Amendment is never applicable to post-arrest seizures of the effects of an arrestee." 415 U.S. at 808 (footnote omitted).

In *United States* v. *Chadwick,* 433 U.S. 1 (1977) this Court explained the limitations of *Edwards* and reconciled *Edwards* with *Preston.*

Chadwick involved three defendants arrested on suspicion of transporting a controlled substance. A footlocker believed to contain the contraband was seized at the time of arrest. The footlocker was removed to Boston Federal Building and searched an hour and a half after the arrest. Among the grounds advanced by the government to uphold the search was the search incident to arrest doctrine. This Court quoted *Preston* with approval, stating that "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest. . . .' " 433 U.S. at 15. This Court went on to distinguish *Edwards* and *United States* v. *Robinson, supra,* 414 U.S. 218 [2] stating:

[2] *Robinson* involved the search, at the time of arrest, of a cigarette package taken from the breast pocket of the coat the arrestee was wearing. 414 U.S. at 220–23. This Court's holding reveals that it viewed the case as involving a search of the person: "[W]e hold that in the case of a lawful custodial arrest a full search of the *person* is not only an exception to the warrant requirement of the Fourth Amendment but is also a 'reasonable' search under that Amendment." 414 U.S. at 235 (italics added).

> "Unlike searches of the person, *United States* v. *Robinson,* 414 U.S. 218 (1973); *United States* v. *Edwards,* 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest."

433 U.S. at 16, fn. 10. This Court further indicated, in dictum, that a search incident to arrest does not extend to "personal property not immediately associated with the person of the arrestee. . . ." *Id.* at 15; *see also Chambers* v. *State,* 422 N.E.2d 1198, 1202–03 (Ind. 1981).

The foregoing portions of *Chadwick* have been the point of departure for subsequent inquiries into searches of personal effects both at the time of arrest and after arrest. Two distinct rules have emerged, although, as will be seen, without a clear division in their applicability. One holds that a search of effects immediately associated with the person may be justified by the fact of arrest alone. The other holds that a search of luggage or similar property not immediately associated with the person of the arrestee remains governed by *Preston's* requirement that the search not be remote in time or place from the arrest.[3]

This Court was cognizant of the above distinction in *New York* v. *Belton, supra,* 453 U.S. 454. In *Belton,* this Court held that "when a policeman has made a lawful

[3] Even a short delay will cause the Court to conclude that the search was not incident to the arrest. *See Dyke* v. *Taylor Implement Co., supra,* 391 U.S. 216.

custodial arrest of the occupant of an automobile, he may, as a *contemporaneous* incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460 (italics added; footnotes omitted). This Court went on to point out that the search in *Chadwick* did not involve a valid search incident to arrest because the search followed the arrest by more than an hour. *Id.* at 462. This Court then noted of the search in *Belton* that it "followed immediately upon [the] arrest." *Ibid.*[4]

Other courts too have been cognizant of the distinction between search of the person and searches of property. The most thorough recent discussion of the point appears in *United States* v. *Monclavo-Cruz,* 662 F. 2d 1285 (9th Cir. 1981), a post-*Belton* case. There the defendant was arrested in a car, and a purse she was carrying was seized from her person. The arresting officer, acting without a warrant, searched the purse in his office an hour after the arrest. The government sought to justify the search as a delayed search of the person incident to arrest within the purview of *Edwards.* The court re-

[4] *Belton* involved the search of the pocket of a jacket. The jacket was not worn by a suspect as in *Robinson* but was, instead, on the seat of the car from which the suspects had been removed. Objects which are deemed part of the person if they are worn lose that character when they are not. Compare *United States* v. *Passaro,* 624 F.2d 938, 943–44 (9th Cir. 1980), *cert. denied,* 449 U.S. 1113 (1981) (wallet taken from pocket of suspect is "an element of his clothing, his person" within the meaning of *Robinson*) with *United States* v. *Marchand,* 564 F.2d 983, 991 (2d Cir. 1977), *cert. denied,* 434 U.S. 1015 (1978) (dictum) (*Chadwick* would not permit search of a wallet left on a table); *see also State* v. *Newman,* 292 Or. 216, 637 P.2d 143, 146–47, fn. 8 (1981), *cert. denied,* ____ U.S. ____ (1982) (dictum) (search of purse lying on ground is a search of property, not the person).

jected this justification. The court recognized that *Edwards* allows the warrantless search of the person. The court ruled, however, that *Chadwick* distinguished *Edwards* and held *Edwards* to be inapplicable to searches of possessions. The court held that the defendant's purse was a possession, not an element of clothing. 662 F.2d at 1289–90. Since the search was remote in time and place from arrest, the court ruled that the search could not be upheld as a search incident to arrest. *Id.* at 1287–88, 1290–91. Other cases also hold that *Chadwick* limits *Edwards* and that *Edwards* does not authorize the search of possessions at a time and place remote from the arrest.[5]

While there is disagreement in the cases concerning whether a purse is immediately associated with the person and hence to be treated as clothing, or is instead not immediately associated with the person and hence

[5] *E.g., United States* v. *Calandrella,* 605 F.2d 236, 248–49 (6th Cir.) *cert. denied,* 444 U.S. 991 (1979); *United States* v. *Schleis,* 582 F.2d 1166, 1168, 1170–72 (8th Cir. 1978) (en banc); *State* v. *Dudley,* 561 S.W.2d 403, 406 (Mo. App. 1977); *see also United States* v. *Johnson,* 588 F.2d 147, 151 (5th Cir. 1979) (dictum); *United States* v. *Berry,* 571 F.2d 2, 3 (7th Cir.), *cert. denied,* 439 U.S. 840 (1978) (dictum); *People* v. *Harris,* 105 Cal.App.3d 204, 215–16, 164 Cal. Rptr. 296 (1980) (dictum); *Matter of B.K.C.,* 413 A.2d 894 (D.C. 1980) (search of briefcase at place other than place of arrest ruled improper); *Shafi* v. *State,* 377 So.2d 787 (Fla.App. 1979) (search of luggage at Border Patrol Office improper); *State* v. *Southwell,* 369 So.2d 371 (Fla.App. 1979) (search of overnight bag at jail held improper); *People* v. *Helm,* 89 Ill.2d 34, 59 Ill. Dec. 276, 431 N.E.2d 1033 (1981) (search of purse at police station ruled improper); *Bradford* v. *State,* 401 N.E.2d 77 (Ind. App. 1980) (same); *Chambers* v. *State, supra,* 422 N.E.2d at 1202–03; *Johnson* v. *State,* 413 N.E.2d 335, 336 (Ind. App. 1980) (search of purse 10 to 15 minutes after arrest ruled improper); *State* v. *Stewart,* 611 S.W.2d 434 (Tex. Cr. App. 1981).

treated as a possession,[6] the case at bench concerns a man's shoulder bag, which is like luggage. Note, *Warrantless Container Searches Under the Automobile and Search Incident Exceptions,* 9 Fordham Urban L.J. 185, 213 (1980). Indeed, the warrantless searches of similar objects have been held improper under *Chadwick. E.g. United States* v. *Rigales,* 630 F.2d 364, 366, 367–68 (5th Cir. 1980) (leather case); *United States* v. *Johnson, supra,* 588 F. 2d at 150–53 (duffle bag); *People* v. *Minjares,* 24 Cal.3d 410, 415, 419–20, 153 Cal. Rptr. 224, 591 P.2d 514, *cert. denied,* 444 U.S. 887 (1979) (tote bag); *Liles* v. *State,* 375 So.2d 1094 (Fla. App. 1979) (leather or vinyl satchel); *State* v. *Hassapelis,* 404 A.2d 232, 237 (Me. 1979) (gym bag); *Pirner* v. *State,* 45 Md. App. 50, 411 A.2d 135, 142 (1980) (duffle bag); *State* v. *Filipi,* 297 N.W.2d 275 (Minn. 1980) (same).

Since the shoulder bag in the case at bench was an article of luggage, it was improper, under *Chadwick,* to search it at a place and time remote from the arrest. See *New York* v. *Belton, supra,* 453 U.S. at 460 (search was a "contemporaneous incident" of arrest); *United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289–90.[7] *United*

[6] Compare, *e.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1290 (purse not to be treated like clothing) and *People* v. *Harris, supra,* 105 Cal.App. 3d at 215–16 (purse, under California law, deemed to be part of the person); see generally *Hinkel* v. *Anchorage,* 618 P.2d 1069, 1072, fn. 3 (Alaska 1980).

[7] The case of *Abel* v. *United States,* 362 U.S. 217 (1960), cited by petitioner and the United States, seems to support a noncontemporaneous search of luggage, but actually does not apply. There I.N.S. agents arrested petitioner in a hotel room and conducted a thorough search of all petitioner's belongings in the room and the adjoining bathroom. Petitioner then packed his possessions and they were taken to I.N.S. headquarters where they were searched more thoroughly. *Id.* at 223–224. This Court upheld the latter search stating: "We do not think it significantly different,

States v. *Chadwick, supra,* 433 U.S. at 15–16, controls and requires that the judgment be affirmed.

B. The Court's Ruling Should Preclude Delayed Searches of All Repositories of Personal Effects, Including Wallets and Purses.

While the search of the shoulder bag in the instant case cannot be justified as a search incident to arrest, the court may wish to promulgate a rule which will remove the inconsistency which currently exists in the law with respect to whether the search incident to arrest theory allows for the delayed searches of purses [8] and wallets.[9] Amicus submits that the Court should hold that searches of repositories of personal effects are invalid if remote in time and place from the arrest.[10]

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when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to the place of detention has an additional justification, similar to those which justify a search of the person of one who is arrested." *Id.* at 239. This Court quoted this language from *Abel* in *United States* v. *Edwards, supra,* 415 U.S. at 803.

Abel does not apply. *United States* v. *Chadwick, supra,* 433 U.S. at 15–16, expressly holds the search of luggage may not be justified as a search incident to arrest when the search is remote in time and place from the arrest. *Chadwick* is incompatible with *Abel* and undermines *Abel's* precedential value. See *United States* v. *Hernandez-Rojas,* 470 F.Supp 1212, 1221 (E.D.N.Y.) *aff'd,* 615 F.2d 1351 (2d Cir. 1979)

[8] Compare, *e.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289–90 (search held improper) and *Sumlin* v. *State,* 266 Ark. 709, 587 S.W.2d 571, 577 (1979) (search held proper).

[9] Compare, *e.g., United States* v. *Passaro, supra,* 624 F.2d at 943–44 (search held proper) and *People* v. *Bean,* 107 Ill. App. 3d 662, 63 Ill. Dec. 373, 437 N.E.2d 1295, 1296–99 (1982) (search held improper).

[10] This case does not present the spatial scope of a search incident to arrest with respect to the possessions of a person not in an automobile. The Court thus need not determine whether the search incident to arrest rationale allows the immediate search of a container carried by such an arrestee or resting near him. The spatial limit here under discussion is the location of the possession at the time of the search, not at the time of its seizure.

Recent cases from this Court point to the adoption of such a rule. This Court has stated that it is improper to make distinctions in Fourth Amendment protection based on the nature of the repository of personal effects. *United States* v. *Ross*, ___ U.S. ___, ___, 72 L.Ed.2d 572, 592 (1982). If the Court is inclined to abolish such distinctions in the context of delayed searches incident to arrest, amicus submits that it should be done so as to prohibit the delayed searches of containers carried in clothing (such as wallets) and containers which serve similar functions (such as women's purses).

Adoption of this rule will not require the Court to depart from its holdings in *United States* v. *Robinson, supra,* 414 U.S. 218 and *United States* v. *Edwards, supra,* 415 U.S. 800. *Robinson* involved a contemporaneous search, not a delayed one. 414 U.S. at 220–23. Searches of containers incident to arrest remain permissible so long as they are contemporaneous to the arrest. *New York* v. *Belton, supra,* 453 U.S. at 462. Since the rule amicus advances applies only to delayed searches, it would have no impact on *Robinson.*

Edwards, on the other hand, involved the seizure of clothing (not a container), and the seizure of evidence of crime which was undoubtedly in plain view on the clothing.[11] It may be limited to these facts, just as *Robinson* is limited to searches contemporaneous to arrest.

[11] Objects within the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence. *Harris* v. *United States,* 390 U.S. 234, 236 (1968).

The rule amicus advances would have no impact on plain view "searches."

But if the Court feels that the abolition of distinctions between containers necessitates a selection between precedents, amicus submits that the rule of *Chadwick* should prevail. As this Court recently noted, when choosing between two lines of authority, its choice "must be based upon principle." *Oregon* v. *Kennedy*, ___ *U.S.* ___, ___ *fn. 8, 72 L.Ed.2d 416, 426, fn. 8 (1982)*. *Chadwick* is based on the fundamental Fourth Amendment principle of protecting expectations of privacy in possessions. 433 U.S. at 16, fn. 10 and at 11.

In contrast *Robinson,* and cases following it, are not based on the fundamental Fourth Amendment principle of protecting expectations of privacy, but instead merely assume and assert that an arrest terminates any expectation of privacy an arrestee may have in his person. *United States* v. *Chadwick, supra,* 433 U.S. at 16, fn. 10. In determining whether that loss of expectation of privacy extends to respondent's shoulder bag, more is needed than the tautological assertion that respondent had no expectation of privacy in it. Amicus believes that *Robinson* speaks directly only to the necessary justification for the initiation of the search of an arrestee, and not to the time and place of such a search.

The central question addressed in *Robinson* was whether any cause to believe an arrestee to be armed or in possession of evidence of a crime was necessary to permit a search of an arrestee's person. This Court held that it was not, stating:

> "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."

414 U.S. at 235. Were this reasoning to be applied to the time and place of the search incident to arrest, an arrestee's house and effects, wherever located and whenever searched, would be without protection against warrantless searches. *Robinson* simply sets forth no principled reason to remove limits upon the time and place of a search incident to arrest.

Indeed, were it the case that "no additional justification" is necessary for a search broader than some permissible minimum (*i.e.*, a search of the person at the time of arrest), the pronouncement in *Robinson* would run afoul of a fundamental premise of our Constitution.

> "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

Shelton v. *Tucker*, 364 U.S. 479, 488 (1960) (footnote omitted).[12] That premise finds application in the realm of the Fourth Amendment in the longstanding rule that the scope of a warrantless search must be strictly tied to and justified by the circumstances permitting its initia-

[12] This precise quotation is the basis for the holding that a repository of personal effects should be secured as a unit, rather than inventoried, in *United States* v. *Hill*, 458 F.Supp. 31, 36–37 (D.D.C. 1978).

tion. *Terry* v. *Ohio,* 392 U.S. 1, 19 (1968); *see also Preston* v. *United States, supra,* 376 U.S. at 367–68; *Agnello* v. *United States,* 269 U.S. 20, 30–31 (1925). There is nothing in the mere fact of arrest which in principle authorizes a search remote in time or place from the arrest.

In amicus' view, the search of a repository of personal effects which has been seized from the person of an arrestee is a greater intrusion than a mere search of the person, and thus requires justification beyond the fact of arrest. The permissibility of the search of the cigarette package approved in *Robinson* is subject to reexamination in light of this Court's recognition in *United States* v. *Chadwick, supra,* 433 U.S. at 13, that the search of a container is a greater intrusion than its initial seizure, in light of the acknowledgement in *Arkansas* v. *Sanders,* 442 U.S. 753, 763 (1979) that the reasonableness of a search of an effect cannot depend solely upon the place from which it is seized, and in light of the ruling in *United States* v. *Ross, supra,* ____ U.S. at ____, 72 L.Ed.2d at 592, that the central purpose of the Fourth Amendment forecloses distinctions between types of containers.

Amicus therefore concludes that Fourth Amendment principles require the Court to adopt the rule that an effect may not be searched at a time and place remote from the arrest without prior judicial approval. Under such a rule, the noncontemporaneous search of respondent's shoulder bag and the noncontemporaneous search of any repository of personal effects, including wallets and purses, would be illegal.

Amicus notes again that he makes the foregoing argument in order to aid the Court in establishing a principled rule which applies to all repositories of personal effects and which will eliminate the current disparity in the case law with respect to searches of wallets and purses. The Court need not, however, establish a broad rule in order to decide the instant case. Respondent's shoulder bag is like luggage and was not immediately associated with his person. The search of the shoulder bag cannot be justified as incident to respondent's arrest because it was remote in time and place from the arrest. *United States* v. *Chadwick,* 433 U.S. at 15–16. Accordingly the court below was correct when, in dictum, it rejected the delayed search incident to arrest theory advanced by petitioner.

II

SINCE IT FURTHERS BOTH THE PURPOSES OF INVENTORY SEARCHES AND THE PRIVACY INTERESTS PROTECTED BY THE FOURTH AMENDMENT TO INVENTORY REPOSITORIES OF PERSONAL EFFECTS AS A UNIT, THEIR CONTENTS MAY BE EXAMINED ONLY WHERE THE CIRCUMSTANCES INDICATE THAT INVENTORYING AS A UNIT WOULD NOT ADEQUATELY SERVE THE PURPOSES OF INVENTORY SEARCHES

In *South Dakota* v. *Opperman,* 428 U.S. 364 (1976), this Court approved the routine inventory searches of certain contents of automobiles without probable cause or a warrant, holding such a practice to be reasonable under the Fourth Amendment. The Court held that the

reasonableness of such a search depends upon a balancing of individual and state interests under the facts of a given case. Relevant are the status, vis-a-vis the Fourth Amendment, of the object to be inventoried, and the purposes of inventorying the effect. *Id.* at 367–69.

In *Opperman,* this Court noted that automobiles enjoy a lesser expectation of privacy [13] than do homes, offices, or repositories of personal effects.[14] *Ibid.* This Court observed that the inventorying of automobiles serves three purposes: the protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger. *Id.* at 369. This Court further observed that in other contexts it had found police intrusions into automobiles reasonable, that the particular inventory search under review [15] was reasonable on its facts, and that inventory searches of automobiles were reasonable in general. *Id.* at 375–376.

Opperman was a 5–4 decision. In a concurring opinion Justice Powell emphasized that the purposes for inventory searches must be weighed against the citizen's in-

[13] "[A] fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests. . . ." *United States* v. *Chadwick, supra,* 433 U.S. at 11.

[14] "[T]he configuration, use and regulation of automobiles may dilute the reasonable expectation of privacy that exists with respect to differently situated property." *Arkansas* v. *Sanders,* 442 U.S. 753, 761 (1979).

[15] The police in *Opperman* inventoried the contents of the car and glove compartment. *Id.* at 366. *Opperman* did not involve an inventory of the contents of a repository of personal effects.

terest in the privacy of the contents of the automobile. *Id.* at 378–379. While he agreed that the search under review was constitutional, *id.* at 384, Justice Powell cautioned that "[u]pholding searches of this type provides no general license for the police to examine all contents of [impounded] automobiles." *Id.* at 380 (footnote omitted).[16]

In a dissenting opinion, Justice Marshall [17] stated that the reasons advanced for inventorying the contents of an automobile did not warrant the intrusion into Opperman's privacy which occurred.[18] He noted, moreover, that "the Court's opinion does not authorize the inspection of suitcases, boxes, or other containers which might themselves be sealed, removed, and secured without further intrusion." *Id.* at 388, fn. 6.

What emerges from an analysis of the concurring and dissenting opinions in *Opperman* is the view, apparently shared by a majority of the Court, that there are limits on the scope of automobile inventory searches, particularly when the search intrudes into the individual's privacy.

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[16] Justice Powell expressed the view that "the unrestrained search of an automobile and its contents would constitute a serious intrusion upon the privacy of the individual in many circumstances. But such a search is not at issue in this case." *Id.* at 379–80. He also suggested that the investigation into private concerns, such as the reading of letters or check books, would not be permissible. *Id.* at 380, fn. 7.

[17] Justices Brennan and Stewart joined in Justice Marshall's dissent. *Id.* at 384. Justice White agreed with most of Justice Marshall's dissent. *Id.* at 396.

[18] Justice Marshall also found that two of the three reasons for inventories, i.e., protection of police against claims or disputes over lost or stolen property, and protection of the police from potential danger, were not present on the record before him. *Id.* at 389–91.

In the instant case this Court will determine the circumstances under which police may inventory the contents of a repository of personal effects. Amicus respectfully submits and will demonstrate that it furthers both the purposes of inventory searches and the privacy interest protected by the Fourth Amendment to inventory repositories of personal effects as a unit. Amicus will show that the overwhelming majority of courts which have considered the issue have approved either inventorying as a unit or some other disposition short of inventorying the contents of such repositories. Amicus does not, however, take the position that an inventory of contents is never permissible; rather, the contents of such repositories may be examined, but only where the circumstances indicate that inventorying as a unit would not adequately serve the purposes for which inventory searches are conducted.

The purposes furthered by the inventorying of a repository of personal effects are the same as the purposes furthered by the inventorying of the contents of a car, *i.e.*, the protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger. *E.g.*, *United States* v. *Bloomfield*, 594 F.2d 1200, 1202 (8th Cir. 1979); *United States* v. *Jackson*, 529 F.Supp. 1047, 1052 (D. Md. 1981); *United States* v. *Hill*, 458 F.Supp. 31, 33, (D. D.C. 1978); *People* v. *Counterman*, 192 Colo. 152, 556 P.2d 481, 484 (1976); *People* v.

Hamilton, 74 Ill.2d 457, 24 Ill. Dec. 849, 386 N.E.2d 53, 57 (1979). But while the purposes for inventorying are the same, a person's expectations of privacy in a repository of personal effects are substantially greater than in an automobile. *United States* v. *Chadwick, supra,* 433 U.S. at 13; *United States* v. *Ross, supra,* ___ U.S. at ___, 72 L.Ed.2d at 585. This Court must determine whether the purposes of the inventory search outweigh the expectation of privacy which the inventorying of the contents of repositories of personal effects infringes.

It first must be noted that although the purposes of inventorying are the same here and in *Opperman,* this Court, in *United States* v. *Chadwick, supra,* 433 U.S. at 13, fn. 7, recognized that automobiles pose special problems of storage, and that the size and inherent mobility of automobiles make them susceptible to theft or intrusion by vandals. This Court has recognized, however, that personal effects pose no security problems comparable to those posed by automobiles. *Arkansas* v. *Sanders, supra,* 442 U.S. at 765–66, fn. 14; *see also, United States* v. *Chadwick, supra,* 433 U.S. at 13.

Turning more specifically to the three purposes for inventories, it appears that none points to the need to routinely inventory the contents of respositories of personal effects, rather than inventorying them as a unit. Indeed, as will be shown, all three purposes are better served by not conducting routine inventories of the contents of such repositories.

Turning first to the purpose of protecting the owner's property, it is self-evident that property is protected not

because it is inventoried but because of the nature of the location in which it is stored and the precautions taken to keep that location secured.[19] Indeed, several courts have recognized that repositories of personal effects can be fully protected by keeping them in a secure location. *E.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289; *United States* v. *Bloomfield, supra,* 594 F.2d at 1202; *United States* v. *Hill, supra,* 458 F.Supp. at 36; *United States* v. *Cooper,* 428 F.Supp. 652, 654 (S.D. Ohio 1977); *People* v. *Bayles,* 82 Ill.2d 128, 44 Ill. Dec. 880, 411 N.E.2d 1346, 1353 (1980), *cert. denied,* 453 U.S. 923 (1981); *see also State* v. *Gwinn,* 301 A.2d 291, 294 (Del. Supr. 1973) (satchel can be secured with a chain lock); *People* v. *Miller,* 7 Cal.3d 219, 224, 101 Cal. Rptr. 860, 496 P.2d 1228 (1972) (coat seized from car need not be searched to be secured).

As to the second purpose, the police secure no greater protection against claims or disputes over lost or stolen property simply because they inventory the repository's

[19] Since automobiles are stored in lots, it might require a guard to keep them secure. *South Dakota* v. *Opperman, supra,* 428 U.S. at 379 (Powell, J., concurring). Repositories of personal effects, on the other hand, are normally stored in a secured area of a jail facility, not in places to which the public might easily gain access. *See United States* v. *Chadwick, supra,* 433 U.S. at 13 (footlocker removed to Boston Federal Building, a secure location).

Moreover, unlike the situation in *Opperman* in which the owner was not present to make other arrangements for the safekeeping of his belongings, 428 U.S. at 375, the owner of a repository of personal effects will be present at the time of booking. He can be given the opportunity to avoid the necessity to "book" his property by posting bond in the case of a petty offense, *United States* v. *Mills,* 472 F.2d 1231, 1240–41 (D.C. Cir. 1972) (en banc), or by arranging for an alternative disposition of his property. *See, e.g., State* v. *Rome,* 354 So.2d 504 (La. 1978).

contents. Justice Powell recognized this in his concurring opinion in *Opperman* when he stated:

> "It is not clear, however, that inventories are a completely effective means of discouraging false claims, since there remains the possibility of accompanying such claims with an assertion that an item was stolen prior to the inventory or was intentionally omitted from the police records."

428 U.S. at 378–379.

Justice Marshall, in his dissent, concurred with Justice Powell's observation and added: "[I]t may well be doubted that an inventory procedure would in any event work significantly to minimize the frustrations of false claims." *Id.* at 391. The police are adequately protected by securing the repository as a unit. *United States* v. *Bloomfield, supra,* 594 F.2d at 1202; *United States* v. *Davis,* 501 F.Supp. 23, 26 (N.D. Ga. 1980), *aff'd,* 647 F.2d 1119 (5th Cir. 1981); *United States* v. *Hill, supra,* 458 F.Supp. at 36. Indeed, false claims are more likely when the contents of an object are handled and inventoried as compared to when the container is immediately sealed. *People* v. *Helm,* 89 Ill.2d 34, 59 Ill.Dec. 276, 431 N.E.2d 1033, 1035 (1981); 2 La Fave, *Search and Seizure,* §5.5 at 360, fn. 50 (1978).

Moreover, the risk of claims against the police is insignificant. Thus in *State* v. *McDougal,* 68 Wis.2d 399, 228 N.W.2d 671, 678 (1975), the court noted that while it did not doubt that false claims against the police had been made, none had ever reached that court. And in *State* v. *Gwinn, supra,* 301 A.2d at 294, the Delaware Supreme Court noted that the state was able to cite no example, there or elsewhere, of a case where an officer was held liable for loss of property. The court further stated that "the police officer, we think, is less likely to be falsely

accused of theft or loss of contents of the satchel if his hands never touch the contents." *Ibid.*

The third purpose of protecting police from potential danger is not served by blindly and routinely searching a repository of personal effects. As was pointed out in *United States* v. *Cooper, supra,* 428 F.Supp. at 655; "No sane individual inspects for booby-traps by simply opening the container." Moreover, if the repository contained an immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the stationhouse in the first place. *See United States* v. *Chadwick, supra,* 433 U.S. at 15, fn. 9. In short, a repository which contains a dangerous object requires special attention by the police. The requisite attention is never given in the context of a routine inventory search. The police protection purpose is thus rarely, not routinely, present. Its invocation should be limited to those situations in which the actions and testimony of the police show a reasonable belief on their part that the repository contained something dangerous. *See United States* v. *Bloomfield, supra,* 594 F.2d at 1203; *People* v. *Helm, supra,* 431 N.E.2d at 1034; *People* v. *Bayles, supra,* 411 N.E.2d at 1352–53; *see also People* v. *Counterman, supra,* 556 P.2d at 485 ("The knapsack did not give any indication that its contents were dangerous. . . ."); *State* v. *Gwinn, supra,* 301 A.2d at 295 (characterizing the risk as "conjectural" and "remote"); *cf. United States* v. *Markland,* 635 F.2d 174 (2d Cir. 1980) *cert. denied,* 451 U.S. 991 (1981) ("surprisingly heavy" plastic thermal beverage bag could have contained something dangerous).[20]

[20] The United States, at page 27 of its amicus brief, states that another rationale for an inventory is to search for identification. We respectfully submit that this contention is specious. Assuming, *arguendo,* that this is an appropriate purpose of an inventory, identification is rarely, if ever, kept in a luggage-like respository such as respondent's shoulder bag. It therefore would not be

As is clear from the foregoing analysis, not only are the expectations of privacy in repositories of personal effects great, but all of the purposes of inventory searches can be better served in virtually every case by something other than the routine searching of the contents of such repositories. This simple truism has been recognized by the overwhelming majority of courts which have addressed the matter of how to inventory a repository of personal effects or other container whose contents are not in plain view. The opinions of these courts make clear that the appropriate way to inventory such repositories and containers is to inventory them as a unit or otherwise store them without opening them. *United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1288–1289; *United States* v. *Bloomfield, supra,* 594 F.2d at 1202–1203; *United States* v. *Schleis,* 582 F.2d 1166, 1173 (8th Cir. 1978) (en banc); *United States* v. *Goshorn,* 510 F.Supp. 108, 112 (D. Mass. 1981); *United States* v. *Davis, supra,* 501 F.Supp. at 26; *United States* v. *Ocampo,* 492 F.Supp. 1211, 1234 (E.D.N.Y. 1980), *modified,* 650 F.2d 421 (2d Cir. 1981); *United States* v. *Hill, supra,* 458 F.Supp. at 33–37; *United States* v. *Vallieres,* 443 F.Supp. 186, 191 (D. Conn. 1977); *United States* v. *Cooper, supra,* 428 F.Supp. at 654; *Reeves* v. *State,* 599 P.2d 727, 735–736 (Alaska 1979); *State* v. *Daniel,* 589 P.2d 408, 417 (Alaska 1979); *People* v. *Miller, supra,* 7 Cal.3d at 224; *Mozzetti* v. *Superior Court,* 4 Cal.3d 699, 707, 94 Cal.Rptr. 412, 484 P.2d

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reasonable to invoke this rationale to sanction all routine inventories of all repositories of personal effects. Even with respect to those objects, such as wallets, which might contain identification, it is more reasonable to ask the arrestee to produce the identification since it is he who would know where in the wallet the identification is located. *See State* v. *Frazier,* 318 N.W.2d 42, 44, fn. 1 (Minn. 1982). In any event, there is no evidence in the record which suggests that the search here under review was conducted for the purpose of verifying respondent's identity.

84 (1971); *People* v. *Counterman, supra,* 556 P.2d at 485; *People* v. *Grana,* 185 Colo. 126, 527 P.2d 543, 545 (1974); *State* v. *Gwinn, supra,* 301 A.2d at 294; *State* v. *Kaluna,* 55 Haw. 361, 520 P.2d 51, 62 (1974); *People* v. *Helm, supra,* 431 N.E.2d at 1034; *People* v. *Bayles, supra,* 411 N.E.2d at 1353; *People* v. *Hamilton, supra,* 386 N.E.2d at 59; *People* v. *Bean,* 107 Ill.App.3d 662, 63 Ill. Dec. 373, 437 N.E.2d 1295, 1300 (1982); *People* v. *Salter,* 91 Ill.App.3d 831, 47 Ill. Dec. 136, 414 N.E.2d 1252, 1255 (1980); *Bradford* v. *State,* 401 N.E.2d 77, 80 (Ind.App. 1980); *State* v. *Potter,* __ Kan.App.2d __, 648 P.2d 1162, 1165 (1982); *State* v. *Morgan,* 3 Kan.App.2d 667, 600 P.2d 155, 159 (1979); *City of Danville* v. *Dawson,* 528 S.W.2d 687, 690–691 (Ky. 1975); *Smith* v. *State,* 48 Md.App. 425, 427 A.2d 1064, 1065 (1981); *People* v. *Miller,* 110 Mich.App.270, 312 N.W.2d 225, 228 (1981); *Obermeyer* v. *State,* 625 P.2d 95, 96–97 (Nev, 1981); *State* v. *Pace,* 171 N.J.Super. 240, 408 A.2d 808, 813 (1979), pet. for certification denied, 84 N.J. 384, 420 A.2d 314 (1980); *State* v. *Bramlett,* 94 N.M. 263, 609 P.2d 345, 347–348 (Ct.App. 1980); *State* v. *Hall,* 52 N.C.App. 492, 279 S.E.2d 111, 115 (1981); *State* v. *Bradshaw,* 41 Ohio App.2d 48, 322 N.E.2d 311, 318 (1974); *State* v. *Downes,* 285 Or. 369, 591 P.2d 1352 (1979); *State* v. *Keller,* 265 Or. 622, 510 P.2d 568, 570 (1973); *Commonwealth* v. *Timko,* 491 Pa. 32, 417 A.2d 620, 623 (1980); *State* v. *Houser,* 95 Wash. 2d 143, 622 P.2d 1218, 1226–1228 (1980); *State* v. *Prober,* 98 Wis.2d 345, 297 N.W.2d 1, 7 (1980); *State* v. *McDougal, supra,* 228 N.W.2d at 678; *State* v. *Goff,* 272 S.E.2d 457, 462, fn. 7 (W.Va. 1980); *see also United States* v. *Bosby,* 675 F.2d 1174, 1179–1180 (11th Cir. 1982); *United States* v. *Mills, supra,* 472 F.2d at 1240–1241 (rather than search a change purse, officers should have given defendant the option of posting collateral for a petty offense to avoid incarceration); *State* v. *Rome, supra,* 354 So.2d 504 (sug-

gesting that defendant should be allowed to make arrangements to avoid having car and its contents taken into custody).[21]

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[21] Amicus recognizes that a smaller number of cases indicate that an inventory search of the contents of a repository of personal effects is permissible. These cases, however, either do not apply to the shoulder bag here under discussion, contain no analysis which balances the purposes of such searches against expectations of privacy, or are otherwise flawed in their reasoning.

Some cases, for example, are limited to their facts. *E.g., United States* v. *Markland, supra,* 635 F.2d at 175–177 (container was not true repository of personal effects and was unusually heavy, indicating potential danger); *Dearing* v. *State,* 393 N.E.2d 167, 173 (Ind. 1979) (officer had reason to believe suitcases contained a shotgun, and defendant asked police to take custody of them); *State* v. *Gelvin,* 318 N.W.2d 302 (N.D.), *cert. denied,* __*U.S.* __ (1982) (limited to inventory search of wallets); *State* v. *Roth,* 305 N.W.2d 501, 506–507 (Iowa, *cert. denied,* __ U.S. __ (1981) (inventory search of paper bag permissible because such an object is not like luggage); *State* v. *Crabtree,* 618 P.2d 484 (Utah 1980) as explained by *State* v. *Romero,* 624 P.2d 699, 702, fn. 1 (Utah 1981).

Other cases contain summary holdings rather than an analysis of whether the need for the search outweighs the privacy interests of the owner or, indeed, even whether such a search promotes the three purposes of inventory searches. *E.g., United States* v. *Rega,* 496 F.Supp. 101, 105 (S.D.N.Y. 1980); *Sumlin* v. *State, supra,* 587 S.W.2d at 577.

Finally, some cases are simply poorly reasoned. For example in *Boulet* v. *State,* 109 Ariz. 433, 511 P.2d 168, 171 (1973) the court states that it is necessary to inventory a container in order to safeguard it. The court fails to explain, however, why inventorying the object as a unit fails to achieve this goal.

In *State* v. *Gelvin, supra,* 318 N.W.2d 302, a case which is limited to wallets, *id.* at 305, the court ruled that it was difficult to secure a wallet as a unit by taping it. *Id.* at 306. The court failed to consider that the wallet could be sealed, *People* v. *Bean, supra,* 437 N.E.2d at 1300 or could be placed in an envelope. See *State* v. *Kaluna, supra,* 520 P.2d at 62.

In *Hamby* v. *Commonwealth,* 222 Va. 257, 279 S.E.2d 163, 166 (1981), the court stated that the epectation of privacy in luggage was no greater than the expectation of privacy in a glove compartment as in *Opperman. Hamby* ignores this Court's holding that luggage enjoys a greater expectation of privacy than does an automobile. *United States* v. *Chadwick, supra,* 433 U.S. at 13; *United States* v. *Ross, supra,* __ U.S. at __, 72 L.Ed.2d at 585.

But amicus does not simply rest his argument on the weight of the authority, on the fact that the purposes of inventory searches are better promoted by inventorying as a unit, or on the need to protect a citizen's privacy interests. There are other strong policy reasons which support amicus' position.

First, inventorying as a unit actually helps the police better perform their duties and affords more protection to the citizenry as a whole. Inventory searches are standard and routine practices. *See South Dakota* v. *Opperman, supra,* 428 U.S. at 375–376. They are governed by established procedures. *United States* v. *Jackson, supra,* 529 F.Supp. at 1055 (and cases cited). These procedures help assure that the inventory search will not be used as a pretext for an otherwise invalid search. *Hicks* v. *State,* 398 So.2d 1008, 1009–1010 (Fla.App. 1981). Such procedures necessarily apply to every object possessed by every arrestee. Assuming the procedures require the search of the *contents* of every such object, they place on police an onerous and time-consuming task which wastes their valuable and scarce resources. Amicus submits that a requirement that repositories of personal effects ordinarily be inventoried as a unit would allow police to devote more time and resources to productive law enforcement activity.

Secondly, inventorying as a unit sets forth a "straightforward rule." *See New York* v. *Belton, supra,* 453 U.S. at 459. That rule informs police precisely what to do in the course of a routine inventory and cautions them not to deviate from the rule unless they can articulate reasons for doing so.[22] Police will be sure of the scope of their authority and citizens will know "how a court will

[22] Amicus realizes that it might be argued that since inventory searches are routine procedures it would be anomalous to predicate them on the facts of the given case. *See, e.g.* Brief of the United States at 9, 22. Such an argument would misconceive amicus' argument. In the vast majority of cases repositories of personal effects would be inventoried as a unit. This would be the

apply a settled principle to a recurring factual situation." *Id.* at 459–60.

In this case reason and the weight of authority are in harmony. Reason dictates, and the majority of courts agree, that the purposes of inventorying are better served by inventorying repositories of personal effects as a unit. It is neither necessary nor prudent to sacrifice a citizen's expectation of privacy when doing so serves no purpose and when strong policy reasons dictate against it. Amicus therefore respectfully urges this Court to hold that it is unreasonable under the Fourth Amendment to inventory the contents of a respository of personal effects in the absence of circumstances which require such an inventory, and therefor to affirm the judgment.

CONCLUSION

Amicus respectfully submits that the judgment of the Illinois Appellate Court should be affirmed.

Respectfully submitted,

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routine procedure. Amicus simply realizes that there might be extraordinary circumstances under which police would be required to search the container, such as where they have reason to believe it contains explosives.

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No. 81-1859

In the Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF ILLINOIS, PETITIONER

v.

RALPH LAFAYETTE

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING REVERSAL

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QUESTION PRESENTED

Whether the Fourth Amendment permits law enforcement officers, following a lawful custodial arrest, to conduct a warrantless search of an arrestee's purse at the stationhouse in the course of booking him on criminal charges.

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In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-1859

STATE OF ILLINOIS, PETITIONER

v.

RALPH LAFAYETTE

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING REVERSAL

INTEREST OF THE UNITED STATES

This case presents an important and recurring question under the Fourth Amendment concerning the permissibility of warrantless searches of the personal effects of an arrestee, conducted at the stationhouse by law enforcement officers as part of a custodial booking procedure. Although this is a state prosecution, similar search practices are undertaken in connection with federal arrests, and questions regarding the proper scope of searches of an arrestee's effects undertaken in the course of processing the arrestee for incarceration arise frequently in federal prosecutions. Accordingly, the issues presented by this case

are of substantial interest to federal law enforcement officers and prosecutors.

STATEMENT

Respondent was indicted in the Circuit Court of Kankakee County, Illinois, on a charge of unlawful possession of amphetamine, in violation of Ill. Ann. Stat. ch. 56½, § 402(b) (Smith-Hurd Cum. Supp. 1982) (J.A. 2). The amphetamine was discovered on September 1, 1980, in the course of a warrantless search of respondent's purse following his arrest for disturbing the peace. Although respondent did not contest the validity of his arrest, he moved to suppress the amphetamine on the ground that the search of his purse violated the Fourth Amendment (J.A. 4). The trial court, without explanation, granted respondent's motion (J.A. 22). On the State's appeal, the Appellate Court, Third District, affirmed the suppression order (J.A. 25-30); thereafter, the Illinois Supreme Court denied the State's petition for leave to appeal (J.A. 31).

1. The evidence at the suppression hearing showed that on September 1, 1980, at approximately 10:00 p.m., Sergeant Maurice Mietzner responded to a call from the manager of a movie theater in Kankakee, Illinois, requesting assistance in removing persons who were causing a disturbance in the theater. When Sergeant Mietzner arrived at the theater he found respondent arguing with the manager. The manager told the officer that he wanted to sign a complaint against respondent for disturbing the peace. Sergeant Mietzner tried to get respondent and the manager to settle the matter, but when respondent continued to yell and scream in the theater, the officer arrested respondent for disturbing the peace. At the time of his arrest, respondent had in his possession a purse that

was strapped over his shoulder.[1] Upon arresting respondent, Sergeant Mietzner did not search respondent or seize the purse. Instead, the officer handcuffed respondent, placed him in a patrol car, and transported him to the police station (J.A. 7, 8, 9-10, 11, 13).

In the booking room, Sergeant Mietzner removed respondent's handcuffs and told respondent to take everything out of his pockets and place the items on the counter (J.A. 7, 10, 11-12, 13-14). According to Sergeant Mietzner, respondent emptied his pockets, and, after removing a package of cigarettes from his purse, respondent placed both the package and the purse on the counter (J.A. 12, 14).[2] Sergeant Mietzner patted the purse and, feeling something else, looked inside and found ten pills, which he believed were "black beauties," wrapped in cellophane. The pills were subsequently found to contain amphetamine (J.A. 12).

Sergeant Mietzner explained that his search of respondent's purse was undertaken in accordance with standard police booking procedures for a custodial search; when he arrests a woman he invariably examines the contents of her purse (J.A. 12, 16). The officer also stated that, in opening respondent's purse, he did not specifically expect to find a gun or drugs inside: "I didn't know what was inside of the purse. * * * [E]verything has got to be inventoried" (J.A. 15).

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[1] Respondent's accessory was variously described as a "handbag" (J.A. 7), a "shoulder bag" (J.A. 11-12), and a "purse" (J.A. 14-15).

[2] According to respondent, one police officer "grabbed" him while another took his purse and "threw it on the counter" (J.A. 7, 10).

2. In affirming the trial judge's order suppressing the amphetamine pills seized from respondent's purse, the appellate court rejected the State's alternative arguments that the search could be justified either as incident to a lawful arrest or as part of a routine inventory of respondent's personal effects, and held that the warrantless search of the purse violated the Fourth Amendment (J.A. 25-30).[3]

While acknowledging that, under this Court's decision in *United States* v. *Edwards*, 415 U.S. 800 (1974), "[a] search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention" (J.A. 27), the court below believed that the subsequent decision in *United States* v. *Chadwick*, 433 U.S. 1 (1977),

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[3] The court first expressed the view that the State had waived the search incident to arrest argument by failing to raise it at the suppression hearing (J.A. 27), but the court nevertheless went on to address and decide this issue (J.A. 27-28). Contrary to the impression of the court below, the record shows that the State in fact did argue before the trial court that the search should be sustained as incident to respondent's arrest. In a brief filed in opposition to respondent's suppression motion, the State pointed out that Illinois law permits a search of the person incident to a lawful arrest, and, relying in part on *United States* v. *Robinson*, 414 U.S. 218 (1973), the State argued that the purse "was carried by the [respondent] as a matter of personal style to carry those articles that other men may put in their pockets or that women may put in a purse * * *. This was not a search of luggage, a briefcase, or a footlocker, but a search of [respondent's] person which extended to all of his personal belongings which he had on him at the time" (J.A. 19-20). Thus, the appellate court erred in concluding that the State failed to argue that the search of the purse could be justified as a search of the person incident to a lawful arrest. In any event, the state court reached and decided this issue; accordingly, this Court may also consider it. See *Jenkins* v. *Georgia*, 418 U.S. 153, 157 (1974); *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959).

limited the *Edwards* rule to delayed searches of only the accused and his clothing (J.A. 27). In the court's view, *Chadwick* establishes a distinction between the person of an arrestee, on the one hand, and all possessions within the arrestee's control at the time of arrest, on the other: as to the arrestee's person, the mere fact of a lawful custodial arrest leads to a substantial diminution in the arrestee's legitimate expectations of personal privacy; the same is not true with regard to objects within the arrestee's control, as to which the arrestee retains his expectation of privacy even after arrest (J.A. 27). Moreover, the court said, the justification for a search incident to arrest dissipates once the police "gain exclusive control of the luggage or personal property not immediately associated with the arrestee, [because] there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed" (J.A. 27-28). The court concluded that respondent had an expectation of privacy in his purse independent of that in his person and clothing and that the warrantless search of the purse was unreasonable: "After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or a warrant" (J.A. 28). Because the purse was thought to be in the officer's "exclusive possession" and no exigent circumstances were present, the court held that the search could not be upheld as incident to respondent's arrest (*ibid.*).

As to the State's argument, in reliance on *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), that the search of the purse could be justified under an inventory rationale, the court noted that the Illinois

Supreme Court, in *People* v. *Bayles*, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), had refused to apply *Opperman* in a case involving an inventory of the contents of an unlocked suitcase found in the defendant's possession at the time of arrest (J.A. 29). The court below concluded that respondent's privacy interest in his purse outweighed the justifications for an inventory described in *Opperman* (428 U.S. at 369). The court could see no possibility of potential harm presented by the purse because the officer testified that he had no fear for his safety at the time of the search (J.A. 29-30). Furthermore, the court believed that the other justifications for an inventory —preservation of the arrestee's property and protection of the police from claims of lost and stolen property—could have been achieved in a less intrusive manner, for example, "by sealing [the purse] within a plastic bag or box and placing it in a secured locker" (J.A. 30).

SUMMARY OF ARGUMENT

The Fourth Amendment permits law enforcement officers effecting a lawful arrest to search the person of the arrestee, including his clothing or a container such as a purse or wallet carried on or about his person, for weapons that could be used either to resist arrest or to escape and for evidence of crime that otherwise might be concealed or destroyed. While some searches that would be permissible incident to an arrest might be impermissible if remote in time and place from the arrest, the fact of a lawful arrest should suffice to permit the police, as part of a standard booking procedure, to conduct a more thorough search of an arrestee's clothing, wallet or purse at the police station prior to placing the arrestee in a detention facility. Such a search serves several purposes in addition to those served by a search at the

point of arrest: ascertaining or verifying the arrestee's true identity so that the authorities may know whom they are dealing with, preventing the introduction of contraband drugs and other dangerous materials into the facility, and permitting the police to inventory the arrestee's property not only to protect that property while in police custody but also to protect the police from false claims of lost or stolen property.

While we have chosen to address the reasonableness of a booking search by analyzing it separately as a traditional "search incident to arrest" and as a valid "inventory," these two theories overlap to a considerable extent. Under either theory, the validity of a search at the stationhouse of an arrestee's personal effects in the course of processing the arrestee prior to his being placed in a detention facility does not depend on the existence of a warrant or probable cause. That is so because such a search is justified by legitimate purposes that are largely unrelated to seeking out evidence of crime and also because there is no danger of arbitrary enforcement since such a search is generally made pursuant to a standard practice of the police department and thus the decision whether to search is not left to the discretion of the individual officer. Whether the search of respondent's purse is viewed as incident to his lawful arrest or as a routine inventory, we submit that the search was reasonable under the Fourth Amendment.

A. In *United States* v. *Edwards*, 415 U.S. 800 (1974), the Court held that in light of the reduced expectations of privacy that accompany a lawful arrest, it was permissible for the police to effect a warrantless seizure and search of a defendant's clothes while he was in custody at the city jail some ten hours after his arrest. The court below erred in concluding that this Court's decision in *United States*

v. *Chadwick*, 433 U.S. 1 (1977), limited the application of *Edwards* by permitting searches at the stationhouse of only the arresteee and his clothing and not of other personal effects, such as a purse, carried by the arrestee at the time of arrest.

It is true that *Chadwick* made clear that a warrantless search of luggage or similar property seized at the time of an arrest cannot be justified as incident to the arrest when the search is temporally and spatially removed from the arrest. But *Chadwick* did not limit the authority of the police, as part of a normal booking procedure, to conduct a more thorough search at the stationhouse of property such as a purse, which is "immediately associated with the person of the arrestee," and with respect to which an arrestee has reduced expectations of privacy as a result of the arrest itself. Thus, a search of a purse should be treated no differently for Fourth Amendment purposes than a search of the pockets of an arrestee's clothing.

Moreover, the state court erred in concluding that the search of a purse may not be justified as incident to arrest once the police gain "exclusive control" over the purse. As this Court recently pointed out in *New York* v. *Belton*, 453 U.S. 454, 462 n.5 (1981), the problem with the "exclusive control" theory is that it would invalidate virtually every search incident to arrest because, "by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.' " In any event, the authority to search a purse or similar property intimately associated with the person of the arrestee stems from the diminution in the arrestee's expectation of privacy in his person resulting from the arrest itself; thus, a search of such property should be upheld as incident to arrest whether it occurs at the scene of arrest or at the stationhouse.

B. In *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), the Court held that it is reasonable for the police to conduct a routine inventory of the contents of a lawfully impounded automobile. We submit that it similarly is permissible for the police to search an arrestee's purse as part of a routine inventory of his personal effects prior to placing the arrestee in a detention facility. While a person may have a greater privacy interest in a purse than in an automobile, the concerns identified by the Court in *Opperman* apply with substantial force to both kinds of property in police custody. As in the case of an automobile, it is proper for the police to ascertain the contents of a purse—where a person is likely to keep money and other valuables—to safeguard the owner's property, to protect against false claims of lost or stolen items, and to protect the police against potential danger. It is also proper to check an arrestee's purse for identification information so that the authorities can determine whether the arrestee is wanted on other charges.

The court below rejected the inventory rationale in part because the officer in this case expressed no fear that respondent's purse contained a weapon. This was error. The permissibility of conducting a routine inventory should not depend on whether the facts of a particular case support one or more of the justifications underlying adoption of an inventory procedure. It is, after all, the routine nature of such inspections, which do not require the officer to make individualized determinations whether to take an inventory, that supports their reasonableness. See *Opperman*, *supra*, 428 U.S. at 374-376; *id.* at 382-384 (Powell, J., concurring). Moreover, the lower court also erred in concluding that the inventory was unreasonable because the police allegedly could have safeguarded respondent's property and protected

themselves against any false claims in a "less instrusive manner" by sealing and storing the purse. The reasonableness of a particular law enforcement practice does not turn on a mechanical "less intrusive manner" analysis. In any event, securing the property in the manner suggested by the court would not protect the police against claims of lost or stolen property to the same extent as an inventory, particularly one carried out in the presence of the owner. The approach suggested by the lower court would also make it more difficult for the police to confirm the true identity of the arrested person.

ARGUMENT

IT IS REASONABLE UNDER THE FOURTH AMENDMENT FOR OFFICERS WHO HAVE MADE A LAWFUL CUSTODIAL ARREST TO CONDUCT A WARRANTLESS SEARCH AT THE STATIONHOUSE OF THE ARRESTEE'S PERSONAL EFFECTS IN THE COURSE OF ADMINISTRATIVE PROCESSING OF THE ARRESTEE FOR POST-ARREST DETENTION

The Fourth Amendment question presented in this case involves the commonplace police practice of conducting a routine inspection of an arrestee's purse and other personal effects as part of the administrative booking procedure. The majority of lower courts that have considered the constitutionality of this practice have upheld it, under either a "search incident to arrest" or an "inventory" rationale. The warrantless search of respondent's purse would be permissible under either of these approaches, since this Court has recognized both a search incident to arrest and an inventory as exceptions to the Fourth Amendment's warrant requirement. See *United States* v. *Robinson*, 414 U.S. 218 (1973); *United States* v. *Edwards*, 415 U.S. 800 (1974); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

We note that the permissible limits of a stationhouse search may differ somewhat depending on which theory is used to justify it. Thus, while a search incident to arrest rationale may not support a delayed search of luggage seized at the time of the arrest, it would support a thorough examination of all items, including purses or wallets, on or about the person of the arrestee. By the same token, while an inventory approach would permit the police to inspect the contents of various types of containers (including luggage) over which they have lawfully acquired custody, the degree of scrutiny that the police may give to individual items is less than in the case of a search incident to arrest.

Whether it is viewed as a search incident to arrest or an inventory, the search in this case was reasonable under the Fourth Amendment. Unlike the typical search for evidence of crime, which ordinarily must be justified by a warrant embodying a finding of probable cause by a neutral magistrate, the reasonableness of a search at the stationhouse of an arrestee's purse or similar personal effects found in the possession of the arrestee at the time of arrest turns on factors unrelated to those requiring probable cause. A booking search of an arrestee's personal effects, undertaken as part of the normal administrative processes following a lawful custodial arrest, is justified by legitimate governmental purposes that are largely unrelated to seeking out evidence of crime. Moreover, because there is no exercise of discretion by the officer in deciding whether to search (*i.e.*, every arrestee's purse is subjected to a search pursuant to standard police procedures) there is no danger of arbitrary enforcement.

The Illinois Appellate Court nevertheless held that the police must obtain a warrant before they may

search an arrestee's purse at the stationhouse in the course of booking the arrestee on criminal charges.[4] It is our submission that the decision below is based on a fundamental misunderstanding of the pertinent Fourth Amendment principles.

A. A Search At The Stationhouse Of An Arrestee's Purse And Other Effects Immediately Associated With The Person Of The Arrestee Should Be Upheld As Incident To A Lawful Arrest

1. It is well settled that a search incident to a lawful arrest is a valid exception to the warrant requirement of the Fourth Amendment. See *Robinson*, *supra*, 414 U.S. at 224. A search incident to arrest traditionally has been justified "by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained." *Edwards*, *supra*, 415 U.S. at 802-803. See *Robinson*, *supra*, 414 U.S. at 234; *Chimel* v. *California*, 395 U.S. 752, 762-763 (1969).

In *Robinson*, the Court made clear that the breadth of the authority to conduct a search incident to a lawful arrest is the same regardless of the nature of the offense for which the suspect is being arrested. 414 U.S. at 234-235. Moreover, the Court concluded that the permissibility of such a search does not turn on the actual presence in each individual case of one of the justifications supporting the authority for a search incident to arrest. As the Court explained (*id.* at 235):

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[4] In *People* v. *Bean*, 107 Ill. App. 3d 662, 437 N.E.2d 1295 (3d Dist. 1982), petition for cert. pending, No. 82-948, the same court similarly held that the warrantless search of an arrestee's wallet during the booking process violated the Fourth Amendment.

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under the Amendment.

See also *New York* v. *Belton*, 453 U.S. 454, 461 (1981). Thus, the Court in *Robinson* upheld, as a valid search incident to arrest, the search of a cigarette package seized from the defendant's coat pocket following his arrest for driving after his license had been revoked, even though the officer did not express any subjective fear of the defendant and the cigarette package was not suspected to contain either a weapon or evidence of the crime for which the defendant had been arrested. 414 U.S. at 236; see *Belton*, *supra*, 453 U.S. at 461.

In *Edwards*, the Court ruled that it was permissible for the police, without first obtaining a warrant, to seize and search the defendant's clothing while he was in custody at the city jail approximately ten hours after his arrest. In so ruling, the Court noted (415 U.S. at 803) that in *Abel* v. *United States*, 362 U.S. 217, 239 (1960), it had upheld the search of belongings carried by the accused to the place of detention on the ground that a valid search of the property could have been made at the place of arrest, and there was no reason for a different result "when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to the

place of detention has additional justifications, similar to those which justify a search of the person of one who is arrested."

The Court in *Edwards* observed that the courts of appeals similarly had concluded that "both the person [of the arrestee] and the property in his immediate possession may be searched at the stationhouse after the arrest has occurred at another place and if evidence of crime is discovered, it may be seized and admitted in evidence." 415 U.S. at 803 (footnote omitted). The Court explained that "'[w]hile the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.'" *Id.* at 808-809, quoting *United States* v. *DeLeo*, 422 F.2d 487, 493 (1st Cir. 1970) (footnote omitted). Accordingly, the Court held that as part of "the normal processes incident to arrest and custody," the police were entitled, "[w]ith or without probable cause, * * * not only to search Edwards' clothing but also to take it from him and keep it in official custody," which was the standard practice of the local police department. 415 U.S. at 804.[5]

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[5] The Court noted (415 U.S. at 804-805 n.6):

> Historical evidence points to the established and routine custom of permitting a jailer to search the person who is being processed for confinement under his custody and control. See, *e.g.*, T. Gardner & V. Manian, Principles and Cases of the Law of Arrest, Search, and Seizure 200 (1974); E. Fisher, Search and Seizure 71 (1970). While "[a] rule of practice must not be allowed * * * to prevail over a constitutional right," *Gouled* v. *United States*, 255 U.S. 298, 313 (1921), little doubt has ever been ex-

2. The Illinois Appellate Court recognized (J.A. 27) that the search of respondent's purse would have passed muster under the principles of *Edwards*. It concluded, however, that this Court's decision in *United States* v. *Chadwick*, 433 U.S. 1 (1977), limited the *Edwards* rule "by sanctioning only delayed searches of the accused and his clothing," and not of objects within the control of the accused at the time of arrest (J.A. 27). We submit that the state court misread the impact of *Chadwick* on the rule laid down in *Edwards*.

The Court in *Chadwick* held that the warrantless search of a footlocker at the federal building about 90 minutes after the defendants' arrests violated the Fourth Amendment. In reaching that result, the Court explained why the search of the footlocker could not be justified as incident to the arrests (433 U.S. at 15; footnote omitted; emphasis added):

> [W]arrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from the arrest," *Preston* v. *United States*, 376 U.S., at 367, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property *not immediately associated with the person of the arrestee* to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

Here, of course, unlike in *Chadwick*, the purse continued to be on respondent's person immediately prior

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pressed about the validity or reasonableness of such searches incident to incarceration. T. Taylor, Two Studies in Constitutional Interpretation 50 (1969).

to the time it was searched. Moreover, in contrast to respondent's purse, the double-locked footlocker in *Chadwick* apparently was not readily accessible even at the time of arrest and thus would not likely have been subject to a search incident to arrest even if the search had taken place contemporaneously with the arrest. Furthermore, in expressing the view that *Chadwick* bars the police from conducting a post-arrest search, at the place of detention, of any property in the possession of the arrestee other than his clothing, the state appellate court overlooked the significance of the qualifying phrase "not immediately associated with the person of the arrestee." The clear implication is that personal property that *is* "immediately associated with the person of the arrestee" may be subject to examination at the station-house as part of "the normal processes incident to arrest and custody." *Edwards, supra,* 415 U.S. at 804.

This reading of *Chadwick* is borne out by the Court's treatment of its earlier decisions in *Robinson* and *Edwards* (433 U.S. at 16 n.10):

> Unlike searches of the person, *United States* v. *Robinson,* 414 U.S. 218 (1973); *United States* v. *Edwards,* 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest.

While *Edwards* involved a search of the arrestee's clothing, *Robinson* involved the search of a container (a cigarette pack) being carried by the suspect at the time of his arrest and in the possession of the officer at the time it was searched. Items such as a purse

or a wallet, which ordinarily are carried on the person of an individual or kept within ready access at all times, equally are immediately associated with the person of the arrestee, and their search is similarly justified by virtue of the arrest itself and the reduced expectations of privacy accompanying the arrest.[6]

3. The court below thus erred in concluding that, despite his lawful arrest, respondent had an expecta-

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[6] The courts of appeals consistently have concluded, even after *Chadwick*, that the search of an arrestee's wallet at the stationhouse may be upheld as incident to arrest. See, *e.g.*, *United States* v. *Sonntag*, 684 F.2d 781, 786 (11th Cir. 1982); *United States* v. *McEachern*, 675 F.2d 618, 622 (4th Cir. 1982); *United States* v. *Baldwin*, 644 F.2d 381, 384 (5th Cir. 1981); *United States* v. *Passaro*, 624 F.2d 938, 943-944 (9th Cir. 1980), cert. denied, 449 U.S. 1113 (1981); *United States* v. *Ziller*, 623 F.2d 562, 563 (9th Cir.), cert. denied, 449 U.S. 877 (1980); *United States* v. *Phillips*, 607 F.2d 808, 809-810 (8th Cir. 1979).

As the court below recognized (J.A. 28), several courts have also upheld searches of a defendant's purse at the stationhouse under a search incident to arrest rationale. However, the Ninth Circuit, in *United States* v. *Monclavo-Cruz*, 662 F.2d 1285 (1981), concluded in a similar situation that the warrantless search of a purse could not be justified as incident to arrest. The court noted that it had approved stationhouse searches of a defendant's wallet as an incident of a lawful arrest and it recognized that "there is a fine line between a wallet on the person and a purse within an arrestee's immediate control." *Id.* at 1290. But the court rejected the search incident to arrest argument because to hold otherwise, it believed, "would allow the police to seize everything within the passenger compartment of a car, take it to the stationhouse, and search it without probable cause [or] a warrant * * *." *Ibid.* Like the state appellate court in this case, the Ninth Circuit in *Monclavo-Cruz* failed to distinguish between property such as luggage that happens to be within the possession of the arrestee at the time of arrest, and property such as a purse or wallet that is by its nature associated with the person of the arrestee.

tion of privacy in his purse independent of and greater than that in his body and clothing. It simply makes no sense, for Fourth Amendment purposes, to impose an artificial distinction between the pockets of an arrestee's clothing and a purse that is worn or carried by the arrestee, which like a pocket is essentially an extension of the arrestee's person.[7] As the court remarked in a related context in *United States* v. *Graham*, 638 F.2d 1111, 1114 (7th Cir.), cert. denied, 450 U.S. 1034 (1981):

> The human anatomy does not naturally contain external pockets, pouches, or other places in which personal objects can be conveniently carried. To remedy this anatomical deficiency clothing contains pockets. In addition, many individuals carry purses or shoulder bags to hold objects they wish to have with them. Containers such as these, while appended to the body, are so closely associated with the person that they are identified with and included within the concept of one's person. To hold differently would be to narrow the scope of a search of one's person to a point at which it would have little meaning.

The reasons for permitting a routine search of the pockets of an arrestee's clothing at the stationhouse

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[7] In this connection, we note that several of the court of appeals' decisions cited with approval in *Edwards*, *supra*, 415 U.S. at 803-804 n.4, involved searches of the pockets of an arrestee's clothing at the stationhouse. See *United States* v. *Manar*, 454 F.2d 342 (7th Cir. 1971); *Cotton* v. *United States*, 371 F.2d 385 (9th Cir. 1967); *Rodgers* v. *United States*, 362 F.2d 358 (8th Cir.), cert. denied, 385 U.S. 993 (1966); *Grillo* v. *United States*, 336 F.2d 211 (1st Cir. 1964), cert. denied, 379 U.S. 971 (1965). In *Grillo*, the officers examined papers found in the defendant's wallet in the course of conducting a search of the person of the defendant as part of the booking procedure.

as an incident of the arrest and custodial detention also apply to searches of an arrestee's purse. Such searches are justified so that the police can determine whether the arrestee is carrying with him contraband, weapons, or other implements capable of facilitating an escape. In addition, it is entirely reasonable, as part of the administrative booking procedure, to inspect the contents of an arrestee's wallet or purse in order to ascertain or verify the identity of the person being incarcerated. See *State* v. *Scroggins*, 297 Minn. 144, 210 N.W. 2d 55 (1973). The standard law enforcement practice of seeking to determine with some reliability the identity of the person who has been arrested, as well as any aliases he may have employed, is a necessary, proper and expected consequence of a lawful arrest. Cf. *Hill* v. *California*, 401 U.S. 797, 803 & n.7 (1971) (noting that it is not uncommon for an arrested person to attempt to avoid arrest by using an alias and false identification). Among other purposes, an identity check enables the authorities to discover whether the arrestee is wanted on other charges; in addition to permitting execution of outstanding warrants, this information is of critical importance to the prosecutor in formulating a recommendation regarding the arrestee's release on bond. See *United States ex rel. Hines* v. *LaVallee*, 521 F.2d 1109, 1112 (2d Cir. 1975), cert. denied, 423 U.S. 1090 (1976).

4. The court below apparently recognized that an arrestee's purse may be searched at the scene of the arrest under the search incident to arrest doctrine. But the court believed that the justification for such a search evaporates once the police gain "exclusive control" over the purse because "there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed" (J.A. 27-

28). But, as this Court recently noted in rejecting a similar argument, "under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced this article to his 'exlusive control.'" *New York* v. *Belton, supra*, 453 U.S. at 462 n.5. Here, as already noted, the purse remained on respondent's person until the moment before it was searched; thus, the search was proper under *Belton*. Moreover, because the arrestee's legitimate expectations of privacy in property immediately associated with his person are substantially diminished as a result of a lawful custodial arrest, the police should be entitled to search such property as an incident of the arrest regardless whether they have seized the property at the scene of the arrest or, as here, after the arrestee has been brought to the stationhouse.

If, as the state court below held, law enforcement officers are barred from searching purses and like containers at the stationhouse, the officers will be required to conduct a much more thorough search of an arrestee's personal effects at the scene of the arrest, thus exposing themselves to greater danger by having to remain at the scene.[8] The opportunity to search both the arrestee and the property immedi-

[8] In *United States* v. *Frankenberry*, 387 F.2d 337, 339 (2d Cir. 1967), cited with approval in *Edwards, supra*, 415 U.S. at 804 n.4, the court remarked that "[i]t is entirely proper and indeed good police practice to make a more careful and thorough search of a person who has been arrested once he is brought to the police station. There are obvious reasons why it is often advisable to conduct a more thorough search at a police station rather than on a public thoroughfare or in a public place and why such a search can be more safely and better conducted in surroundings which are completely under police control."

ately associated with his person "should not be more limited merely because there may have been reasons making a full search [at the scene] impractical or because the police opted for the less humiliating alternative of a search in the privacy of the station-house." 2 W. LaFave, *Search and Seizure*, § 5.3, at 306 (1978) (footnotes omitted).

B. The Fourth Amendment Permits Law Enforcement Officers To Inventory The Contents Of Containers Over Which They Have Lawfully Acquired Custody

1. In *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), this Court held that the police may conduct a routine inventory of the contents of an automobile that has been lawfully impounded. The Court observed that the standard practice of securing and inventorying an automobile's contents had developed in response to three distinct needs: "the protection of the owner's property while it remains in police custody * * *; the protection of the police against claims or disputes over lost or stolen property * * *; and the protection of the police from potential danger * * *." *Id.* at 369. See also *Cady* v. *Dombrowski*, 413 U.S. 433, 446-447 (1973); *Harris* v. *United States*, 390 U.S. 234, 235-236 (1968); *Cooper* v. *California*, 386 U.S. 58, 61-62 (1967).

Although Fourth Amendment concerns clearly are implicated by the practice of inventorying the contents of an automobile (see *Opperman*, *supra*, 428 U.S. at 377 n.1 (Powell, J., concurring)), the reasonableness of this practice does not depend on the existence of probable cause. "The standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures." *Id.* at 370 n.5. Moreover, the warrant requirement has no application to routine inventories of lawfully impounded automobiles, because a search warrant may be issued

only on probable cause and also because the policies underlying the warrant requirement do not come into play in the noninvestigative context of inventories. *Ibid.* "The officer does not make a discretionary determination to search based on a judgment that certain conditions are present. Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized. There are thus no special facts for a neutral magistrate to evaluate." *Id.* at 383 (Powell, J., concurring). See *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 565-566 (1976). Thus, under *Opperman*, the determination whether an inventory was reasonable in a particular case turns on whether the police had lawful custody of the automobile and whether the inventory was conducted in a reasonable manner pursuant to standard police caretaking procedures.

2. The question in this case is whether the rationale of *Opperman* may be applied to uphold inventories of property other than automobiles over which the police lawfully acquire custody. In refusing to apply *Opperman* to the search of respondent's purse, the court below did not dispute that the police had lawful custody of the purse, which respondent was wearing over his shoulder at the time of his lawful arrest. Nor did the court question that the search of the purse was conducted pursuant to a standard procedure of the local police department—indeed, Sergeant Mietzner testified that his search was undertaken as part of a normal booking procedure (J.A. 12, 16).[9] Instead, the state court concluded that an

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[9] Apart from the policy of the local police department, Illinois law requires that "[a]n inventory of all instruments, articles or things seized on a search without warrant shall be given to the person arrested and a copy thereof delivered to

individual's privacy interest in the contents of a purse or other closed containers, such as luggage or a briefcase, outweigh the justifications for an inventory recognized in *Opperman*. In our view, the concerns that justify routine inventories of lawfully impounded automobiles apply with substantial force to inventories of other types of personal property properly taken into police custody, whether in the course of executing a lawful arrest or otherwise.

a. The need to protect the police "from potential danger" (*Opperman*, *supra*, 428 U.S. at 369) is at least as cogent in the context of a purse or other container taken to the stationhouse as in the automobile impoundment situation. Indeed, prohibiting law enforcement agents from inventorying the contents of containers taken into custody could expose not only the agents, but all persons in the building in which the agency has its offices, to potential danger if a weapon, explosive, or other dangerous instrumentality is concealed inside a container.

The court below brushed this consideration aside on the ground that respondent's purse presented "no possibility of potential harm" because Sergeant Mietzner testified that "he had no fear for his safety at the time of the search" (J.A. 29-30). But the per-

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the judge before whom the person arrested is taken * * *. If the person arrested is released without a charge being preferred against him all instruments, articles or things seized, other than contraband, shall be returned to him upon release." Ill. Ann. Stat. ch. 38, § 108-2 (Smith-Hurd 1980).

Federal law enforcement agencies follow similar inventory procedures. For example, following a custodial arrest, FBI agents conduct an itemized inventory of property in the possession of an arrestee. Similarly, DEA agents are instructed to inventory all property in the possession of an arrestee, although locked or sealed containers are inventoried as a unit rather than being opened.

missibility of conducting a routine inventory should not turn on whether the facts of a particular case support one or more of the justifications underlying adoption of an inventory procedure—indeed, the practice would not be "routine" if it did. Cf. *United States* v. *Robinson*, *supra*, 414 U.S. at 235-236 (validity of search not dependent on case-by-case assessment "of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest"; thus, it was "of no moment" that the officer "did not indicate any subjective fear of the [defendant] or that he did not himself suspect that [defendant] was armed").

Moreover, just because the officer in this case did not express a subjective fear for his safety does not mean that no potential danger was presented and does not detract from the reasonableness of conducting an inventory as a routine practice.[10] As in the case of impounded automobiles, the occasional danger that may exist when containers are taken into custody "cannot be discounted entirely. * * * The harmful consequences in those rare cases may be great, and there does not appear to be any effective way of identifying in advance those circumstances or classes of [container] impoundments which represent a greater risk." *Opperman*, *supra*, 428 U.S. at 378 (Powell, J., concurring).[11] A rule allowing the police to in-

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[10] The fact that the officer did not suspect that respondent's purse contained a weapon or drugs (J.A. 14-15) supports the State's contention that the search was undertaken as part of a routine booking procedure and not as a pretext to search for evidence of criminal conduct.

[11] Cf. *Robinson*, *supra*, 414 U.S. at 234 (footnote omitted), where the Court refused to assume "that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than those arrested for other crimes."

ventory the contents of impounded containers would enable the police to ensure that containers in their custody are safe to handle and store.

b. The court below also erred in concluding (J.A. 30) that the inventory constituted an unreasonable search because the two other objectives identified in *Opperman*—preservation of the owner's property while it remains in custody and protection of the police from claims of lost or stolen property—could have been achieved in a "less intrusive manner" by, for example, sealing respondent's purse inside a bag and placing it in a secured locker. The reasonableness of a particular law enforcement practice does not turn on a mechanical "less intrusive manner" analysis. As this Court has stated, the fact that a valid law enforcement objective "might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable." *Cady* v. *Dombrowski*, *supra*, 413 U.S. at 447. "The logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." *United States* v. *Martinez-Fuerte*, *supra*, 428 U.S. at 557 n.12.

In any event, securing the property in the manner suggested by the court would not insulate the police from false claims of lost or stolen property to the same extent as inventorying the contents of a container, particularly where the inventory is witnessed by the owner. Such a procedure serves to establish for both the owner and the police what is in the container, thus resolving potential problems. As Justice Powell, concurring in *Opperman*, noted (428 U.S. at 378; footnote omitted), "[s]ociety * * * has an important interest in minimizing the number of false claims filed against police since they may diminish the community's respect for law enforcement gen-

erally and lower department morale, thereby impairing the effectiveness of the police." At the same time, if property is damaged or lost, the inventory helps to assure that the owner receives proper compensation.

3. At bottom, the decision below appears to be grounded on the view that inventories of automobiles may be distinguished from inventories of containers because an individual has a greater expectation of privacy "in closed personal containers than in vehicles" (J.A. 29). In the context of determining the applicability of the warrant requirement to investigative searches based on probable cause, this Court has indicated that a person's privacy interest in luggage or similar containers is greater than in an automobile. See *United States* v. *Ross*, No. 80-2209 (June 1, 1982), slip op. 13; *Arkansas* v. *Sanders*, 442 U.S. 753, 761 (1979); *United States* v. *Chadwick*, *supra*, 433 U.S. at 13. But these privacy concerns have little relevance in the case of a routine inspection of the contents of a container for purposes unrelated to seeking evidence of crime.[12]

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[12] Although the Court in *Opperman* (428 U.S. at 367-368) noted the reduced expectation of privacy that attaches to automobiles, the Court did not suggest that the inventory rationale is inapplicable outside the automobile context. Indeed, a number of the lower court decisions cited with approval in *Opperman* (428 U.S. at 371-372) involved inventories of the contents of a container found during an inventory of an automobile. See *United States* v. *Mitchell*, 458 F.2d 960 (9th Cir. 1972) (sample case); *United States* v. *Lipscomb*, 435 F.2d 795 (5th Cir. 1970), cert. denied, 401 U.S. 980 (1971) (suitcase); *Lowe* v. *Hopper*, 400 F. Supp. 970 (S.D. Ga. 1975) (sealed envelope in plastic pouch); *State* v. *Tully*, 166 Conn. 126, 348 A.2d 603 (1974) (paper bag and knapsack); *People* v. *Sullivan*, 29 N.Y.2d 69, 272 N.E.2d 464 (1971) (briefcase); *State* v. *Montague*, 73 Wash. 2d 381, 438 P.2d 571 (1968) (paper bag).

The fact that a person may have a substantial privacy interest in the contents of a container such as a purse does not detract from the reasonableness of inventorying the purse's contents. "A purse is precisely the place where * * * money and valuables * * * would normally be found." *People* v. *Bullwinkle*, 105 Cal. App. 3d 82, 89, 164 Cal. Rptr. 163, 167 (2d Dist.), appeal dismissed, 449 U.S. 988 (1980). Thus, as in the case of an automobile, it seems to us perfectly proper for the police to ascertain the contents of a purse or similar container to safeguard the owner's property, to protect against false claims of lost or stolen items, and to satisfy safety concerns. In addition, as noted earlier (see pages 18-19, *supra*), inspection of the contents of a wallet or purse also is necessary to ascertain or confirm the identity of the arrested person. See 2 W. LaFave, *Search and Seizure*, *supra*, § 5.3, at 306-307.

For these reasons, we believe that the examination of the contents of respondent's purse was justified as an inventory of property lawfully in the custody of the police as an incident of respondent's arrest and incarceration. This does not mean that police are without limits as to the scope of a permissible inventory. As in *Opperman*, a container inventory should be upheld only where it is shown to be consistent with established police procedures, and where it is not a pretext concealing an investigatory motive. Moreover, the degree of scrutiny given to individual items should not be more than is required to produce an itemized list; it should not, for example, involve examining the contents of "materials such as letters or checkbooks that 'touch upon intimate areas of an individual's personal affairs,' and 'reveal much about a person's activities, associations and beliefs.' " *Opperman*, *supra*,

428 U.S. at 380 n.7 (Powell, J., concurring), quoting *California Bankers Association* v. *Shultz*, 416 U.S. 21, 78-79 (1974) (Powell, J., concurring). See 2 W. LaFave, *Search and Seizure*, *supra*, § 5.3, at 307 n.29. Such a searching examination would suggest that the inventory was a pretext for an investigative search. There is, however, nothing in the present record to indicate that Sergeant's Mietzner's examination of the contents of respondent's purse was for any purpose other than to determine the nature of the property taken into lawful custody.

CONCLUSION

The judgment of the Illinois Appellate Court should be reversed.

Respectfully submitted.

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No. 81-1859-CSY
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Title: Illinois, Petitioner
v.
Ralph Lafayette

Docketed:
April 3, 1982

Court: Appellate Court of Illinois,
Third District

Counsel for petitioner: Ficaro, Michael A.

Counsel for respondent: Agostinelli, Robert

Entry	Date	Note	Proceedings and Orders
1	Apr 3 1982	G	Petition for writ of certiorari filed.
2	May 12 1982		DISTRIBUTED. May 27, 1982
3	May 25 1982	F	Response requested.
4	Jun 30 1982		DISTRIBUTED. September 27, 1982
5	Jun 26 1982	G	Motion of respondent for leave to proceed in forma pauperis filed.
6	Jun 26 1982		Brief of respondent in opposition filed.
8	Oct 25 1982		REDISTRIBUTED. October 29, 1982
10	Nov 1 1982		REDISTRIBUTED. November 5, 1982
11	Nov 8 1982		Motion of respondent for leave to proceed in forma pauperis GRANTED.
12	Nov 8 1982		Petition GRANTED.
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14	Dec 22 1982		Order extending time to file brief of petitioner on the merits until January 6, 1983.
15	Dec 23 1982		Joint appendix filed.
16	Dec 29 1982		Brief amicus curiae of United States filed.
17	Jan 3 1983		Brief amicus curiae of Americans for Effective Law Enforcement filed.
18	Jan 4 1983		Record filed.
19	Jan 4 1983		Certified original record, 2 vols., received.
20	Jan 10 1983		Brief of petitioner State of Illinois filed.
21	Feb 3 1983		Brief amicus curiae of Calif. State Public Defender filed.
22	Feb 9 1983		Brief of respondent filed.
23	Mar 10 1983		CIRCULATED.
24	Mar 24 1983		SET FOR ARGUMENT. Wednesday, April 20, 1983. (4th case) 1 hour
25	Apr 13 1983	X	Reply brief of petitioner State of Illinois filed.
26	Apr 20 1983		ARGUED.